

34:15-94

LEGISLATIVE HISTORY CHECKLIST  
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(Division of  
Workers  
Compensation--administration  
costs)

LAWS OF: 1990

CHAPTER: 46

Bill No: S1351

Sponsor(s): O'Connor

Date Introduced: Pre-filed

Committee: Assembly: -----

Senate: Labor, Industry, & Professions

Amended during passage: No

Date of Passage: Assembly: June 18, 1990

Senate: June 11, 1990

Date of Approval: June 28, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: No

Senate: Yes

Fiscal Note: Yes

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

KBG/SLJ

1 AN ACT concerning workers' compensation and amending  
2 R.S.34:15-94.

3  
4 BE IT ENACTED by the Senate and General Assembly of the  
5 State of New Jersey:

6 I. R.S.34:15-94 is amended to read as follows:

7 34:15-94 a. Each mutual association or stock company writing  
8 compensation or employer's liability insurance in this State, and  
9 each self-insurer, shall pay to the Commissioner of Labor a sum  
10 equal to that proportion of 150% of the total amount of moneys  
11 paid under R.S.34:15-95 during the preceding calendar year, less  
12 the amount of net assets exceeding \$5,000,000.00 remaining in  
13 such fund as of December 31 of said preceding calendar year,  
14 which the total compensation payments of such mutual  
15 association, stock company or self-insurer bear to the total  
16 compensation payments made by all such mutual associations,  
17 stock companies, and self-insurers during such preceding calendar  
18 year. Such sum shall be paid by the Commissioner of Labor to the  
19 State Treasurer.

20 On or before August 1, 1986 the Commissioner of Labor shall  
21 recalculate payments due for calendar year 1986 in accordance  
22 with the formula provided above, and levy supplemental  
23 assessments to adjust for any difference due to be paid in  
24 satisfaction of obligations for calendar year 1986, giving full  
25 credit for payments previously due and paid on or before August  
26 15, 1986. Such supplemental assessments, if necessary to be  
27 levied, shall be paid on or before September 15, 1986.  
28 Commencing January 1, 1987, and each calendar year thereafter,  
29 annual payments shall be calculated by the commissioner and  
30 sums due shall be paid in equal quarterly installments on or  
31 before March 15, on or before June 15, on or before September 15  
32 and on or before December 15 of each year.

33 The assessment established in this subsection shall be  
34 terminated effective December 31, 1988.

35 b. Commencing January 1, 1989 and on the first day of each  
36 year thereafter, the Commissioner of Labor shall levy an annual  
37 surcharge upon all policyholders and self-insured employers for  
38 the purpose of providing moneys to the Second Injury Fund. Each  
39 policyholder and self-insured employer shall be liable for

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 payment of the annual surcharge in accordance with the  
2 provisions of this section and all regulations promulgated  
3 pursuant hereto. The annual surcharge levied under this section  
4 shall be applied to all workers' compensation and employer's  
5 liability insurance policies providing coverage on or after January  
6 1, 1989 and, in the case of self-insured employers, to coverage  
7 provided on or after January 1, 1989. Notwithstanding any law to  
8 the contrary, the surcharge levied pursuant to this section shall  
9 not apply: to any reinsurance or retrocessional transaction; to the  
10 State or any political subdivision thereof which acts as a  
11 self-insured employer; or to any workers' compensation  
12 endorsement required pursuant to section 1 of P.L.1979, c.380  
13 (C.17:36-5.29).

14 c. On or before July 31 of 1988 and of each year thereafter:

15 (1) Each insurer and self-insured employer shall submit to the  
16 Commissioner of Labor, in a form and manner prescribed by the  
17 Commissioner of Labor, a report of the total compensation  
18 payments made by the insurer or self-insured employer during the  
19 12-month period ending on the immediately preceding June 30th;

20 (2) Each insurer shall submit to the Commissioner of  
21 Insurance, in a form and manner prescribed by the Commissioner  
22 of Insurance, a report of the total earned premiums collected by  
23 the insurer on all workers' compensation or employer's liability  
24 policies written on risks located in this State pursuant to the  
25 provisions of R.S.17:17-1 et seq., during the 12-month period  
26 ending on the immediately preceding June 30th;

27 (3) The Commissioner of Labor shall estimate the amount of  
28 special adjustment and supplemental benefits payable by each  
29 insurer writing workers' compensation or employer's liability  
30 insurance in the State and by each self-insured employer pursuant  
31 to R.S.34:15-95 during the then current fiscal year;

32 (4) The Commissioner of Labor shall establish the aggregate  
33 annual surcharge to be levied upon policyholders and self-insured  
34 employers during the next following calendar year, which shall be  
35 an amount equal to 150% of the moneys estimated by the  
36 Commissioner of Labor to be payable from the Second Injury  
37 Fund during the next following calendar year, less the estimated  
38 amount of net assets exceeding \$5,000,000.00 which will remain  
39 in the Second Injury Fund on December 31st of the then current  
40 calendar year;

41 (5) The Commissioner of Labor shall apportion the aggregate  
42 annual surcharge calculated pursuant to paragraph (4) of this  
43 subsection among policyholders as a group and self-insured  
44 employers as a separate group. Policyholders shall be liable to  
45 pay that portion of the aggregate annual surcharge that is equal  
46 to the proportion that the compensation payments made by all  
47 policyholders during the 12-month period ending on the  
48 immediately preceding June 30th bear to the total compensation  
49 payments made by all policyholders and self insured employers

1 during the 12-month period ending on the immediately preceding  
2 June 30th. Self-insured employers shall be liable to pay that  
3 portion of the aggregate annual surcharge that is equal to the  
4 proportion that the compensation payments made by all  
5 self-insured employers during the 12-month period ending on the  
6 immediately preceding June 30th bear to the total compensation  
7 payments made by all policyholders and self-insured employers  
8 during the 12-month period ending on the immediately preceding  
9 June 30th; and

10 (6) The Commissioner of Labor shall notify the Commissioner  
11 of Insurance of the aggregate annual surcharge amount applicable  
12 to policyholders during the next following calendar year.

13 d. On or before September 15 of 1988 and of each year  
14 thereafter:

15 (1) In consultation with the Commissioner of Labor, the  
16 Commissioner of Insurance shall determine the annual  
17 policyholder surcharge rate to be applied to each workers'  
18 compensation and employer's liability policy during the next  
19 following calendar year, and shall notify insurers of the annual  
20 policyholder surcharge rate to be applied to policy premiums  
21 during the next following calendar year. The annual policyholder  
22 surcharge rate shall be established as a percentage, which shall  
23 be equal to the percentage relationship that the annual surcharge  
24 amount which is applicable to all policyholders bears to the total  
25 earned premiums for workers' compensation and employer's  
26 liability coverage written on risks located in this State for the  
27 12-month period ending on the immediately preceding June 30th.

28 (2) The Commissioner of Labor shall notify each self-insured  
29 employer of the amount of the annual surcharge applicable to  
30 that self-insured employer during the next following calendar  
31 year. The net annual surcharge for each self-insured employer  
32 shall be established as a pro rata portion of the annual surcharge  
33 applicable to all self-insured employers, which shall be  
34 chargeable to the self-insured employer in the proportion that  
35 the self-insured employer's compensation payments during the  
36 12-month period ending on the immediately preceding June 30th  
37 bear to the total compensation payments made by all self-insured  
38 employers during the 12-month period ending on the immediately  
39 preceding June 30th, less the estimated amount of special  
40 adjustment and supplemental benefits payable by that  
41 self-insured employer pursuant to R.S.34:15-95 during the then  
42 current fiscal year.

43 e. (1) Every insurer providing workers' compensation and  
44 employer's liability insurance shall collect from each of its  
45 policyholders, on behalf of the Commissioner of Labor and in  
46 accordance with subsections b., c. and d. of this section, an  
47 amount equal to the annual policyholder surcharge rate  
48 established by the Commissioner of Insurance pursuant to  
49 subsection d. of this section, multiplied by the amount of the

1 policyholder's premium. The surcharge to be collected from the  
2 policyholder shall be stated separately on the policy or billing  
3 statement and be collected at the same time and in the same  
4 manner that the premium or other charges for the coverage are  
5 collected. On or before the 30th day after the end of the  
6 calendar quarter commencing January 1, 1989, and on or before  
7 the 30th day following the end of each calendar quarter  
8 thereafter, each insurer shall report to the Commissioner of  
9 Labor, on forms as the commissioner may require, the total  
10 amount of its workers' compensation and employer's liability  
11 insurance earned premiums for the preceding quarterly  
12 accounting period, and remit the surcharge collected from  
13 policyholders on those premiums, less special adjustment and  
14 supplemental benefits paid during the preceding calendar quarter  
15 by the insurer pursuant to the workers' compensation law,  
16 R.S.34:15-1 et seq. No insurer or its agent shall be entitled to  
17 any portion of any surcharge imposed pursuant to this section as a  
18 fee or commission for its collection nor shall that surcharge be  
19 subject to any taxes, licenses or fees.

20 (2) On or before the 30th day after the end of each calendar  
21 quarter commencing January 1, 1989, and on or before the 30th  
22 day following the end of each calendar quarter thereafter, each  
23 self-insured employer shall remit to the Commissioner of Labor  
24 an amount equal to one-fourth of the effective net annual  
25 surcharge as established for that self-insured employer during the  
26 then current calendar year pursuant to subsection d. of this  
27 section, less special adjustment and supplemental benefits paid  
28 during the preceding calendar quarter by the self-insured  
29 employer pursuant to the workers' compensation law,  
30 R.S.34:15-1 et seq.

31 f. The Commissioner of Labor shall promulgate within 180  
32 days of the effective date of this act and in accordance with the  
33 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
34 seq.), any rules and regulations as may be necessary for the  
35 apportionment and collection of annual surcharges from  
36 policyholders and self-insured employers covered by this section.

37 g. The Commissioner of Insurance shall promulgate within 180  
38 days of the effective date of this act and in accordance with the  
39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
40 seq.), any rules and regulations as may be necessary for the  
41 collection, and provision to the Commissioner of Labor, of  
42 information with respect to earned premiums of insurers and the  
43 establishment of the annual surcharge rate for policyholders.

44 h. For each 30-day period or part thereof during which a  
45 policyholder, self-insured employer, or insurer fails to make a  
46 payment or transfer of payment as required by this section or  
47 regulations promulgated [thereto] pursuant hereto, a penalty of  
48 one-half of one percent (0.5%) of the amount of delinquent  
49 payment or transfer of payment shall be assessed against the

1 delinquent policyholder, self-insured employer or insurer. In no  
2 case of single failure, however, shall penalties assessed under this  
3 section exceed five percent (5.0%) of the amount of surcharge  
4 unpaid or untransferred. Penalties assessed under this subsection  
5 shall be collected in a civil action by a summary proceeding  
6 brought by the Commissioner of Labor pursuant to "the penalty  
7 enforcement law," N.J.S.2A:58-1 et seq., and shall be deposited  
8 by the commissioner in the Second Injury Fund.

9 i. For each 30-day period during which an insurer or  
10 self-insured employer fails to file a report as required by this  
11 section, the Commissioner of Labor shall assess a penalty of  
12 \$100.00 against the insurer or self-insured employer and, upon  
13 collection thereof, shall deposit those monies in the "uninsured  
14 employer's fund." As a result of any single failure, however, no  
15 such penalty shall exceed a total of \$500.00. During the period of  
16 any such failure to file this report, the estimate by the  
17 Department of Labor of the amounts of such compensation  
18 payments or earned premiums shall be used for the purposes cited  
19 in the workers' compensation law, R.S.34:15-1 et seq.

20 j. [When the total amount of all payments into the Second  
21 Injury Fund, together with the accumulated interest thereon,  
22 exceeds \$1,250,000.00, an amount not to exceed \$50,000.00 of  
23 such excess over \$1,250,000.00 in any one fiscal year may be  
24 applied toward] The Commissioner of Labor may, with the  
25 authorization of and appropriation by the Legislature, transfer  
26 from the Second Injury Fund an amount necessary for the cost of  
27 administration of the Division of Workers' Compensation in the  
28 Department of Labor, when authorized and appropriated by the  
29 Legislature].

30 k. As used in this section, "policyholder" means a holder of a  
31 policy of workers' compensation or employer's liability insurance  
32 issued by an insurer. "Insurer" means a domestic, foreign or alien  
33 mutual association or stock company writing workers'  
34 compensation or employer's liability insurance on risks located in  
35 this State and subject to premium taxes pursuant to P.L.1945,  
36 c.132 (C.54:18A-1 et seq.). "Self-insured employer" means an  
37 employer which self-insures for workers' compensation or  
38 employer's liability insurance pursuant to the provisions of  
39 R.S.34:15-77.

40 (cf: P.L.1988, c.26, s.1)

41 2. This act shall take effect immediately.

#### 42 43 44 STATEMENT

45  
46 This bill permits the Commissioner of Labor, after  
47 authorization and appropriation by the Legislature, to transfer  
48 from the Second Injury Fund an amount necessary for the cost of  
49 administering the Division of Workers' Compensation in the

## 1 Department of Labor.

2 Currently, an amount from the Second Injury Fund not to  
3 exceed \$50,000 may be used for administering the Division of  
4 Workers' Compensation when the total of all payments into the  
5 Second Injury Fund, including interest, exceeds \$1,250,000 in any  
6 one fiscal year. The \$50,000 is to come out of the amount which  
7 is in excess of \$1,250,000 and requires the authorization of and  
8 appropriation by the Legislature.

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Permits transfer of funds from the Second Injury Fund under  
certain conditions for use in administering Division of Workers'  
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2 case of single failure, however, shall penalties assessed under this  
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Permits transfer of funds from the Second Injury Fund under  
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Compensation.

SENATE LABOR, INDUSTRY AND PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 1351

STATE OF NEW JERSEY

DATED: MAY 17, 1990

The Senate Labor, Industry and Professions Committee reports favorably Senate Bill No. 1351.

This bill permits the Commissioner of Labor, after authorization and appropriation by the Legislature, to transfer from the Second Injury Fund an amount necessary for the cost of administering the Division of Workers' Compensation in the Department of Labor.

Currently, an amount from the Second Injury Fund not to exceed \$50,000 may be used for administering the Division of Workers' Compensation when the total of all payments into the Second Injury Fund, including interest, exceeds \$1,250,000 in any one fiscal year. The \$50,000 is to come out of the amount which is in excess of \$1,250,000 and requires the authorization of and appropriation by the Legislature. Currently, no funds from the Second Injury Fund are being used for administering the Division of Workers' Compensation.

LEGISLATIVE FISCAL ESTIMATE TO

SENATE, No. 1351

STATE OF NEW JERSEY

DATED: June 22, 1990

Senate Bill No. 1351 of 1990 creates a new system for financing the administration of the workers' compensation law, R.S.34:15-1 et seq. Administration of the law is presently financed through annual appropriations from the General Fund. This appropriation has not been recommended by the Governor for renewal in FY 1991, however. In order to maintain the current level of funding for the system, it would be necessary to implement the transfer of funds permitted by this bill.

Under the bill, the Commissioner of Labor would be permitted, after authorization and appropriation by the Legislature, to transfer from the Second Injury Fund an amount necessary for the cost of administering the Division of Workers' Compensation in the Department of Labor. Currently, an amount from the Second Injury Fund not to exceed \$50,000 may be used for administering the program when the total of all payments into the Second Injury Fund, including interest, exceeds \$1,250,000 in any one fiscal year. The \$50,000 is to come out of the amount which is in excess of \$1,250,000 and requires the authorization of an appropriation by the Legislature. No funds from the Second Injury Fund are being used for administering the Division of Workers' Compensation at present, however. In FY 1990, the adjusted appropriation for the administration of the system was \$6,385,000.

The present statutory scheme requires replacement of moneys transferred from the Second Injury Fund by assessments on insurance carriers and self insurers. More than 3 million employees work for employers who are subject to charges imposed to support the Second Injury Fund. The State Labor Department estimates that the average annual cost to employers as a result of this bill would be \$1.63 per year per employee and \$29.95 per employer, assuming approximately 18 employees for the average employer. Actual costs for individual firms would vary from those averages according to the number of employees and the level of claims activity of the employer firm. The cost would be divided among all insurance carriers and self insurers in the system in a manner which reflects how intensively each employer uses the system.

The Office of Legislative Services concurs with the Department of Labor's estimates.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.