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[974.90 E55. 2008](#)

Committee meeting of the Senate Labor Committee: examination of the worker's compensation system in New Jersey: [May 5, 2008, Trenton, New Jersey] / meeting recorded and transcribed by the Office of Legislative Services, Public Information Office, Hearing Unit. By New Jersey. Legislature. Senate. Labor Committee.

LAW/RWH 3/6/09

P.L. 2008, CHAPTER 94, *approved October 1, 2008*
Senate, No. 1914 (*Second Reprint*)

1 AN ACT concerning workers' compensation insurance and
2 amending R.S.34:15-79 and P.L.1995, c.393.

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

6
7 1. R.S.34:15-79 is amended to read as follows:

8 34:15-79. An employer who fails to provide the protection
9 prescribed in this article shall be guilty of a [disorderly persons
10 offense] ²[crime of the fourth degree] disorderly persons offense²
11 and shall be guilty of a crime of the [fourth] ¹[second] ²[third¹]
12 fourth² degree if such failure is [willful] ¹[with knowledge of the
13 requirements of R.S.34:15-20 et seq.] knowing.¹ In cases where a
14 workers' compensation award in the Division of Workers'
15 Compensation of New Jersey against the defendant is not paid at the
16 time of the sentence, the court may suspend sentence upon that
17 defendant and place him on probation for any period with an order
18 to pay the delinquent compensation award to the claimant through
19 the probation office of the county. Where the employer is a
20 corporation, ¹any officer who is actively engaged in the corporate
21 business, including, but not limited to,¹ the president, vice-
22 president, secretary, and the treasurer thereof [who are actively
23 engaged in the corporate business] shall be liable for failure to
24 secure the protection prescribed by this article. Any contractor
25 placing work with a subcontractor shall, in the event of the
26 subcontractor's failing to carry workers' compensation insurance as
27 required by this article, become liable for any compensation which
28 may be due an employee or the dependents of a deceased employee
29 of a subcontractor. The contractor shall then have a right of action
30 against the subcontractor for reimbursement.

31 A rebuttable presumption that an employer has established a
32 successor firm, corporation or partnership shall arise if the two
33 share at least three of the following capacities or characteristics: (1)
34 perform similar work; (2) occupy the same premises; (3) have the
35 same telephone or fax number; (4) have the same email address or
36 internet website; (5) perform work in the same geographical area;
37 (6) employ substantially the same work force; (7) utilize the same
38 tools and equipment; (8) employ or engage the services of any
39 person or persons involved in the direction or control of the other;
40 or (9) list substantially the same work experience. If it is

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SLA committee amendments adopted June 5, 2008.

²Assembly floor amendments adopted June 23, 2008.

1 determined that an employer has established a successor firm,
2 corporation or partnership, the “uninsured employer’s fund” shall
3 have a subrogation right against the successor firm, corporation or
4 partnership for any benefits paid pursuant to R.S. 34:15-1 et seq. by
5 the “uninsured employer’s fund,” the injured worker may seek
6 benefits not otherwise paid or payable by the “uninsured employer’s
7 fund” from the successor firm, corporation or partnership, and the
8 successor firm, corporation or partnership shall have all of the same
9 responsibilities regarding workers’ compensation required pursuant
10 to R.S.34:15-1 et seq. as the original employer.

11 Failure to produce at the time of the trial or upon written request
12 by the division proof of workers' compensation insurance coverage
13 by a mutual association or stock company authorized to write
14 coverage on such risks in this State or written authorization by the
15 Commissioner of Banking and Insurance to self-insure for workers'
16 compensation pursuant to R.S.34:15-77, which was in force for the
17 time cited by the **[Department of Labor]** division, creates a
18 rebuttable presumption that the employer was uninsured when
19 charged with a violation of this section.

20 **[All fines collected under the terms of this section shall be paid**
21 **to the State Treasurer and credited on the records of the State**
22 **Comptroller to the account of the Division of Vocational**
23 **Rehabilitation Services in the Department of Labor, to be used in**
24 **carrying out the provisions of P.L.1955, c.64 (C.34:16-20 et seq.).]**

25 The Director of the Division of Workers' Compensation, or any
26 officer or employee of the division designated by **[him]** the
27 director, upon finding that an employer has failed for a period of
28 not less than 10 consecutive days to make the provisions for
29 payment of compensation required by R.S.34:15-71 and R.S.34:15-
30 72, shall impose upon that employer, in addition to all other
31 penalties, fines or assessments provided for in chapter 15 of Title 34
32 of the Revised Statutes or in any supplement thereto, **‘[an**
33 **assessment]** a penalty**’** in the amount of up to **[\$1,000.00]** \$5,000
34 and when the period exceeds **[20]** 10 days, an additional
35 **‘[assessment]** penalty**’** of up to **[\$1,000.00]** \$5,000 for each period
36 of 10 days thereafter. All **‘[assessments]** penalties**’** under this act
37 shall be enforced and collected in accordance with section 12 of
38 P.L.1966, c.126 (C.34:15-120.3). All penalties **‘[and**
39 **assessments]****’** collected under this section shall be paid into the
40 "uninsured employer's fund."

41 (cf: P.L.1995, c.393, s.1)

42

43 2. Section 2 of P.L.1995, c.393 (C. 34:15-89.1) is amended to
44 read as follows:

45 2. a. On or before March 1, 1996 and thereafter, the
46 Compensation Rating and Inspection Bureau shall notify all mutual
47 associations and stock companies authorized to write workers'

1 compensation or employer's liability insurance on risks located in
2 this State of the requirements of subsections b. and c. of this
3 section.

4 b. On and after July 1, 1996, all mutual associations and stock
5 companies authorized to write workers' compensation or employer's
6 liability policies on risks located in this State shall, upon
7 application for new policies or renewal of any existing policies,
8 require submission of the employer identification number as
9 assigned by the Department of Labor and Workforce Development
10 pursuant to the provisions of the "unemployment compensation
11 law," R.S.43:21-1 et seq., by each employer and shall maintain the
12 identification number in their records and shall include the
13 identification number on policies of insurance to be filed with the
14 Compensation Rating and Inspection Bureau.

15 If the employer has been exempted from or is otherwise not
16 subject to the provisions of the "unemployment compensation law,"
17 the mutual association or stock company writing workers'
18 compensation insurance or employer's liability insurance coverage
19 on risks of that employer shall, in a form and manner prescribed by
20 the [Department of Labor] division, assign an identification
21 number to that employer.

22 If an employer fails or refuses to comply with the reporting
23 requirements of this subsection, the mutual association or stock
24 company shall immediately notify the Division of Workers'
25 Compensation of such failure or refusal. Failure or refusal without
26 reasonable cause shall result in the assessment of a penalty of up to
27 \$1,000 for each failure or refusal which shall be enforceable on a
28 petition filed by the "uninsured employer's fund" in a summary
29 proceeding before a judge of compensation upon notice to the
30 employer and the proceeds of which shall be paid into the
31 "uninsured employer's fund." Likewise, if a mutual association or
32 stock company fails or refuses without reasonable cause to comply
33 with the reporting requirements of this subsection and its insured
34 employer has complied with those reporting requirements, a penalty
35 of up to \$1,000 for each such failure or refusal shall be enforceable
36 on a petition filed by the "uninsured employer's fund" in a
37 summary proceeding before a judge of compensation upon notice to
38 the mutual association or stock company and any proceeds of the
39 penalty shall be paid into the "uninsured employer's fund."

40 c. On and after July 1, 1996 the Compensation Rating and
41 Inspection Bureau shall record and maintain the employer
42 identification numbers received from mutual associations and stock
43 companies pursuant to subsection b. of this section. The bureau
44 shall, upon request of the Division of Workers' Compensation,
45 provide to the division information, in a form and manner as
46 prescribed by the division, with respect to the workers'
47 compensation or employer's liability insurance coverage status of

1 employers in this State, including the employer identification
2 numbers.

3 d. On or before March 1, 1996 the Department of Banking and
4 Insurance shall provide to the Division of Workers' Compensation a
5 complete list of all employers engaged in business in this State who
6 have been authorized, pursuant to the provisions of R.S.34:15-77 et
7 seq., to self-insure for the payment of compensation. After that
8 date, the department shall continue to provide notification to the
9 division, in a form and manner as prescribed by the division, of any
10 newly approved self-insured employer or the **[recision]** rescission
11 of the authority for any previously approved employer to self-
12 insure. On or before July 1, 2008 and thereafter, as may be
13 requested by the division and in a form and manner as prescribed by
14 the division, the Department of Banking and Insurance shall provide
15 to the division a complete list of all mutual associations and stock
16 companies authorized to write workers' compensation or
17 employer's liability insurance coverage on risks in the State.
18 (cf: P.L.1995, c.393, s.2)

19

20 3. This act shall take effect immediately.

21

22

23

24

25 Strengthens enforcement against employers for failure to provide
26 workers' compensation coverage.

SENATE, No. 1914

STATE OF NEW JERSEY
213th LEGISLATURE

INTRODUCED MAY 22, 2008

Sponsored by:

Senator PAUL A. SARLO

District 36 (Bergen, Essex and Passaic)

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

SYNOPSIS

Strengthens enforcement against employers for failure to provide workers' compensation coverage.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning workers' compensation insurance and
2 amending R.S.34:15-79 and P.L.1995, c.393.

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

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7 1. R.S.34:15-79 is amended to read as follows:

8 34:15-79. An employer who fails to provide the protection
9 prescribed in this article shall be guilty of a **[disorderly persons**
10 **offense]** crime of the fourth degree and shall be guilty of a crime of
11 the **[fourth]** second degree if such failure is **[willful]** with
12 knowledge of the requirements of R.S.34:15-20 et seq. In cases
13 where a workers' compensation award in the Division of Workers'
14 Compensation of New Jersey against the defendant is not paid at the
15 time of the sentence, the court may suspend sentence upon that
16 defendant and place him on probation for any period with an order
17 to pay the delinquent compensation award to the claimant through
18 the probation office of the county. Where the employer is a
19 corporation, the president, vice-president, secretary, and the
20 treasurer thereof **[who are actively engaged in the corporate**
21 **business]** shall be liable for failure to secure the protection
22 prescribed by this article. Any contractor placing work with a
23 subcontractor shall, in the event of the subcontractor's failing to
24 carry workers' compensation insurance as required by this article,
25 become liable for any compensation which may be due an employee
26 or the dependents of a deceased employee of a subcontractor. The
27 contractor shall then have a right of action against the subcontractor
28 for reimbursement.

29 A rebuttable presumption that an employer has established a
30 successor firm, corporation or partnership shall arise if the two
31 share at least three of the following capacities or characteristics: (1)
32 perform similar work; (2) occupy the same premises; (3) have the
33 same telephone or fax number; (4) have the same email address or
34 internet website; (5) perform work in the same geographical area;
35 (6) employ substantially the same work force; (7) utilize the same
36 tools and equipment; (8) employ or engage the services of any
37 person or persons involved in the direction or control of the other;
38 or (9) list substantially the same work experience. If it is
39 determined that an employer has established a successor firm,
40 corporation or partnership, the "uninsured employer's fund" shall
41 have a subrogation right against the successor firm, corporation or
42 partnership for any benefits paid pursuant to R.S. 34:15-1 et seq. by
43 the "uninsured employer's fund," the injured worker may seek
44 benefits not otherwise paid or payable by the "uninsured employer's

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 fund” from the successor firm, corporation or partnership, and the
2 successor firm, corporation or partnership shall have all of the same
3 responsibilities regarding workers’ compensation required pursuant
4 to R.S.34:15-1 et seq. as the original employer.

5 Failure to produce at the time of the trial or upon written request
6 by the division proof of workers' compensation insurance coverage
7 by a mutual association or stock company authorized to write
8 coverage on such risks in this State or written authorization by the
9 Commissioner of Banking and Insurance to self-insure for workers'
10 compensation pursuant to R.S.34:15-77, which was in force for the
11 time cited by the **【Department of Labor】** division, creates a
12 rebuttable presumption that the employer was uninsured when
13 charged with a violation of this section.

14 **【All fines collected under the terms of this section shall be paid**
15 **to the State Treasurer and credited on the records of the State**
16 **Comptroller to the account of the Division of Vocational**
17 **Rehabilitation Services in the Department of Labor, to be used in**
18 **carrying out the provisions of P.L.1955, c.64 (C.34:16-20 et seq.).】**

19 The Director of the Division of Workers' Compensation, or any
20 officer or employee of the division designated by **【him】** the
21 director, upon finding that an employer has failed for a period of
22 not less than 10 consecutive days to make the provisions for
23 payment of compensation required by R.S.34:15-71 and R.S.34:15-
24 72, shall impose upon that employer, in addition to all other
25 penalties, fines or assessments provided for in chapter 15 of Title 34
26 of the Revised Statutes or in any supplement thereto, an assessment
27 in the amount of up to **【\$1,000.00】** \$5,000 and when the period
28 exceeds **【20】** 10 days, an additional assessment of up to
29 **【\$1,000.00】** \$5,000 for each period of 10 days thereafter. All
30 assessments under this act shall be enforced and collected in
31 accordance with section 12 of P.L.1966, c.126 (C.34:15-120.3). All
32 penalties and assessments collected under this section shall be paid
33 into the "uninsured employer's fund."

34 (cf: P.L.1995, c.393, s.1)

35
36 2. Section 2 of P.L.1995, c.393 (C. 34:15-89.1) is amended to
37 read as follows:

38 2. a. On or before March 1, 1996 and thereafter, the
39 Compensation Rating and Inspection Bureau shall notify all mutual
40 associations and stock companies authorized to write workers'
41 compensation or employer's liability insurance on risks located in
42 this State of the requirements of subsections b. and c. of this
43 section.

44 b. On and after July 1, 1996, all mutual associations and stock
45 companies authorized to write workers' compensation or employer's
46 liability policies on risks located in this State shall, upon
47 application for new policies or renewal of any existing policies,

1 require submission of the employer identification number as
2 assigned by the Department of Labor and Workforce Development
3 pursuant to the provisions of the "unemployment compensation
4 law," R.S.43:21-1 et seq., by each employer and shall maintain the
5 identification number in their records and shall include the
6 identification number on policies of insurance to be filed with the
7 Compensation Rating and Inspection Bureau.

8 If the employer has been exempted from or is otherwise not
9 subject to the provisions of the "unemployment compensation law,"
10 the mutual association or stock company writing workers'
11 compensation insurance or employer's liability insurance coverage
12 on risks of that employer shall, in a form and manner prescribed by
13 the **[Department of Labor]** division, assign an identification
14 number to that employer.

15 If an employer fails or refuses to comply with the reporting
16 requirements of this subsection, the mutual association or stock
17 company shall immediately notify the Division of Workers'
18 Compensation of such failure or refusal. Failure or refusal without
19 reasonable cause shall result in the assessment of a penalty of up to
20 \$1,000 for each failure or refusal which shall be enforceable on a
21 petition filed by the "uninsured employer's fund" in a summary
22 proceeding before a judge of compensation upon notice to the
23 employer and the proceeds of which shall be paid into the
24 "uninsured employer's fund." Likewise, if a mutual association or
25 stock company fails or refuses without reasonable cause to comply
26 with the reporting requirements of this subsection and its insured
27 employer has complied with those reporting requirements, a penalty
28 of up to \$1,000 for each such failure or refusal shall be enforceable
29 on a petition filed by the "uninsured employer's fund" in a
30 summary proceeding before a judge of compensation upon notice to
31 the mutual association or stock company and any proceeds of the
32 penalty shall be paid into the "uninsured employer's fund."

33 c. On and after July 1, 1996 the Compensation Rating and
34 Inspection Bureau shall record and maintain the employer
35 identification numbers received from mutual associations and stock
36 companies pursuant to subsection b. of this section. The bureau
37 shall, upon request of the Division of Workers' Compensation,
38 provide to the division information, in a form and manner as
39 prescribed by the division, with respect to the workers'
40 compensation or employer's liability insurance coverage status of
41 employers in this State, including the employer identification
42 numbers.

43 d. On or before March 1, 1996 the Department of Banking and
44 Insurance shall provide to the Division of Workers' Compensation a
45 complete list of all employers engaged in business in this State who
46 have been authorized, pursuant to the provisions of R.S.34:15-77 et
47 seq., to self-insure for the payment of compensation. After that
48 date, the department shall continue to provide notification to the

1 division, in a form and manner as prescribed by the division, of any
2 newly approved self-insured employer or the ~~recision~~ rescission
3 of the authority for any previously approved employer to self-
4 insure. On or before July 1, 2008 and thereafter, as may be
5 requested by the division and in a form and manner as prescribed by
6 the division, the Department of Banking and Insurance shall provide
7 to the division a complete list of all mutual associations and stock
8 companies authorized to write workers' compensation or
9 employer's liability insurance coverage on risks in the State.
10 (cf: P.L.1995, c.393, s.2)

11

12 3. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill strengthens enforcement of the requirement that
18 employers provide workers' compensation coverage, by increasing
19 the penalties against certain employers who fail to provide coverage
20 or fail to provide proof of coverage and imposing penalties against
21 insurers who fail to provide required employer identification
22 numbers when filing workers' compensation insurance policies with
23 the State.

24 Specifically, the bill:

25 1. Increases the level of an offense of an employer failing to
26 provide required workers' compensation coverage from a disorderly
27 persons offense to a crime of the fourth degree and, if the failure is
28 a knowing failure, from a crime of the fourth degree to a crime of
29 the second degree, and the cases for which the higher criminal
30 penalties apply are changed from willful failures to provide the
31 required coverage to knowing failures to provide the required
32 coverage;

33 2. Establishes a rebuttable presumption that an employer is not
34 insured if the employer fails to provide proof of coverage when the
35 division make a written request for proof;

36 3. Establishes a rebuttable presumption that an employer has
37 established a successor firm if two firms share at least three out of
38 nine listed characteristics;

39 4. Adds vice-president to the specified officers of a corporation
40 who are liable for failure to provide coverage, and makes all
41 indicated officers liable regardless of whether they are actively
42 engaged in the corporate business;

43 5. Imposes penalties of up to \$1,000 against insurers who fail
44 to provide required employer identification numbers when filing
45 workers' compensation insurance policies with the State; and

46 6. Requires the Department of Banking and Insurance to
47 provide to the Division of Workers' Compensation in the
48 Department of Labor and Workforce Development a complete list

S1914 SARLO, CUNNINGHAM

6

- 1 of all mutual associations and stock companies authorized to write
- 2 workers' compensation or employer's liability insurance coverage
- 3 on risks in the State.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1914

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2008

The Senate Labor Committee reports favorably and with committee amendments Senate Bill No. 1914.

As amended, the bill strengthens enforcement of the requirement that employers provide workers' compensation coverage, by increasing the penalties against certain employers who fail to provide coverage or fail to provide proof of coverage and imposing penalties against insurers who fail to provide required employer identification numbers when filing workers' compensation insurance policies with the State.

Specifically, the amended bill:

1. Increases the level of an offense of an employer failing to provide required workers' compensation coverage from a disorderly persons offense to a crime of the fourth degree and, if the failure is a knowing failure, from a crime of the fourth degree to a crime of the third degree, and the cases for which the higher criminal penalties apply are changed from willful failures to provide the required coverage to knowing failures to provide the required coverage;
2. Establishes a rebuttable presumption that an employer is not insured if the employer fails to provide proof of coverage when the division makes a written request for proof;
3. Establishes a rebuttable presumption that an employer has established a successor firm if two firms share at least three out of nine listed characteristics;
4. Clarifies that any officer of a corporation who is actively involved in the corporate business, may be liable for failure to provide coverage and adds vice-president to the specified officers of a corporation who may be held liable;
5. Increases the penalty for failure to render timely payment of compensation from \$1,000 to \$5,000;
6. Provides that the "assessment" which may be imposed for failure to make timely payment of compensation shall instead be a "penalty," so as to ensure that the penalty shall be recoverable in any related bankruptcy proceeding. Generally, "assessments" are

dischargeable in bankruptcy; “penalties” are not; therefore, this change will facilitate recovery of the penalty;

7. Imposes penalties of up to \$1,000 against insurers who fail to provide required employer identification numbers when filing workers’ compensation insurance policies with the State; and

8. Requires the Department of Banking and Insurance to provide to the Division of Workers’ Compensation in the Department of Labor and Workforce Development a complete list of all mutual associations and stock companies authorized to write workers’ compensation or employer’s liability insurance coverage on risks in the State.

The committee amended the bill to:

a. Reduce the degree of the crime for a knowing violation from second to third degree;

b. Clarify that the standard for such a violation is a “knowing” standard, not “willful,” as the law currently provides, and not “with knowledge of the requirements of R.S.34:15-20 et seq.,” as the introduced bill would have changed the “willful” standard;

c. Provide that the “assessment” which may be imposed for failure to make timely payment of compensation shall instead be a “penalty,” so as to ensure that the penalty shall be recoverable in any related bankruptcy proceeding. Generally, “assessments” are dischargeable in bankruptcy; “penalties” are not; therefore, this change will facilitate recovery of the penalty.

STATEMENT TO
[First Reprint]
SENATE, No. 1914

with Assembly Floor Amendments
(Proposed By Assemblyman COHEN)

ADOPTED: JUNE 23, 2008

The Assembly amendments eliminate the provisions of the bill which would have increased the degree of the crime for a knowing failure to provide required workers' compensation coverage from fourth to third degree, and would have increased the offense for a failure without knowledge from a disorderly persons offense to a crime of the fourth degree. The amendments, therefore, leave the levels of offense at the levels existing in the current law, a crime of the fourth degree and a disorderly persons offense, respectively.

ASSEMBLY, No. 2967

STATE OF NEW JERSEY 213th LEGISLATURE

INTRODUCED JUNE 12, 2008

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman NEIL M. COHEN

District 20 (Union)

Assemblyman THOMAS P. GIBLIN

District 34 (Essex and Passaic)

Assemblyman PETER J. BARNES, III

District 18 (Middlesex)

Co-Sponsored by:

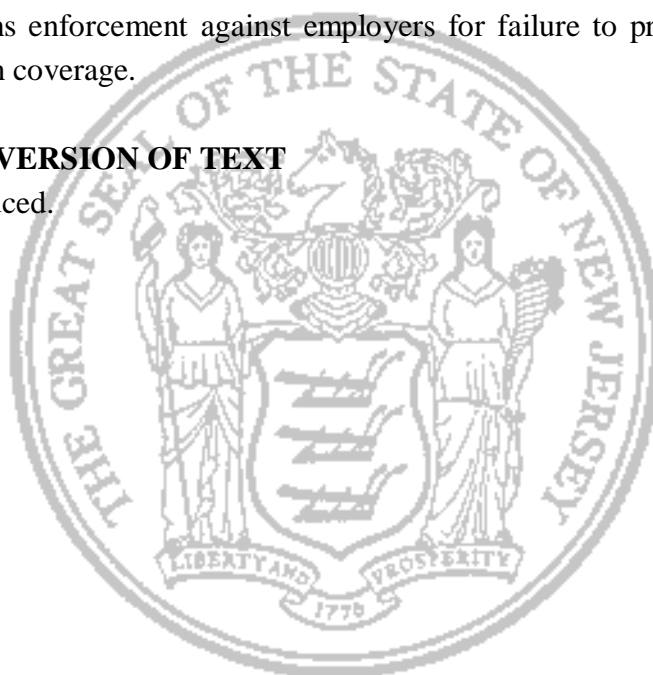
Assemblyman Ramos

SYNOPSIS

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(Sponsorship Updated As Of: 6/13/2008)

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17 to pay the delinquent compensation award to the claimant through
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20 treasurer thereof **[who are actively engaged in the corporate**
21 **business]** shall be liable for failure to secure the protection
22 prescribed by this article. Any contractor placing work with a
23 subcontractor shall, in the event of the subcontractor's failing to
24 carry workers' compensation insurance as required by this article,
25 become liable for any compensation which may be due an employee
26 or the dependents of a deceased employee of a subcontractor. The
27 contractor shall then have a right of action against the subcontractor
28 for reimbursement.

29 A rebuttable presumption that an employer has established a
30 successor firm, corporation or partnership shall arise if the two
31 share at least three of the following capacities or characteristics: (1)
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33 same telephone or fax number; (4) have the same email address or
34 internet website; (5) perform work in the same geographical area;
35 (6) employ substantially the same work force; (7) utilize the same
36 tools and equipment; (8) employ or engage the services of any
37 person or persons involved in the direction or control of the other;
38 or (9) list substantially the same work experience. If it is
39 determined that an employer has established a successor firm,
40 corporation or partnership, the "uninsured employer's fund" shall
41 have a subrogation right against the successor firm, corporation or
42 partnership for any benefits paid pursuant to R.S. 34:15-1 et seq. by
43 the "uninsured employer's fund," the injured worker may seek
44 benefits not otherwise paid or payable by the "uninsured employer's

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2 successor firm, corporation or partnership shall have all of the same
3 responsibilities regarding workers’ compensation required pursuant
4 to R.S.34:15-1 et seq. as the original employer.

5 Failure to produce at the time of the trial or upon written request
6 by the division proof of workers' compensation insurance coverage
7 by a mutual association or stock company authorized to write
8 coverage on such risks in this State or written authorization by the
9 Commissioner of Banking and Insurance to self-insure for workers'
10 compensation pursuant to R.S.34:15-77, which was in force for the
11 time cited by the **【Department of Labor】** division, creates a
12 rebuttable presumption that the employer was uninsured when
13 charged with a violation of this section.

14 **【All fines collected under the terms of this section shall be paid**
15 **to the State Treasurer and credited on the records of the State**
16 **Comptroller to the account of the Division of Vocational**
17 **Rehabilitation Services in the Department of Labor, to be used in**
18 **carrying out the provisions of P.L.1955, c.64 (C.34:16-20 et seq.).】**

19 The Director of the Division of Workers' Compensation, or any
20 officer or employee of the division designated by **【him】** the
21 director, upon finding that an employer has failed for a period of
22 not less than 10 consecutive days to make the provisions for
23 payment of compensation required by R.S.34:15-71 and R.S.34:15-
24 72, shall impose upon that employer, in addition to all other
25 penalties, fines or assessments provided for in chapter 15 of Title 34
26 of the Revised Statutes or in any supplement thereto, an assessment
27 in the amount of up to **【\$1,000.00】** \$5,000 and when the period
28 exceeds **【20】** 10 days, an additional assessment of up to
29 **【\$1,000.00】** \$5,000 for each period of 10 days thereafter. All
30 assessments under this act shall be enforced and collected in
31 accordance with section 12 of P.L.1966, c.126 (C.34:15-120.3). All
32 penalties and assessments collected under this section shall be paid
33 into the "uninsured employer's fund."

34 (cf: P.L.1995, c.393, s.1)

35
36 2. Section 2 of P.L.1995, c.393 (C. 34:15-89.1) is amended to
37 read as follows:

38 2. a. On or before March 1, 1996 and thereafter, the
39 Compensation Rating and Inspection Bureau shall notify all mutual
40 associations and stock companies authorized to write workers'
41 compensation or employer's liability insurance on risks located in
42 this State of the requirements of subsections b. and c. of this
43 section.

44 b. On and after July 1, 1996, all mutual associations and stock
45 companies authorized to write workers' compensation or employer's
46 liability policies on risks located in this State shall, upon
47 application for new policies or renewal of any existing policies,

1 require submission of the employer identification number as
2 assigned by the Department of Labor and Workforce Development
3 pursuant to the provisions of the "unemployment compensation
4 law," R.S.43:21-1 et seq., by each employer and shall maintain the
5 identification number in their records and shall include the
6 identification number on policies of insurance to be filed with the
7 Compensation Rating and Inspection Bureau.

8 If the employer has been exempted from or is otherwise not
9 subject to the provisions of the "unemployment compensation law,"
10 the mutual association or stock company writing workers'
11 compensation insurance or employer's liability insurance coverage
12 on risks of that employer shall, in a form and manner prescribed by
13 the **[Department of Labor]** division, assign an identification
14 number to that employer.

15 If an employer fails or refuses to comply with the reporting
16 requirements of this subsection, the mutual association or stock
17 company shall immediately notify the Division of Workers'
18 Compensation of such failure or refusal. Failure or refusal without
19 reasonable cause shall result in the assessment of a penalty of up to
20 \$1,000 for each failure or refusal which shall be enforceable on a
21 petition filed by the "uninsured employer's fund" in a summary
22 proceeding before a judge of compensation upon notice to the
23 employer and the proceeds of which shall be paid into the
24 "uninsured employer's fund." Likewise, if a mutual association or
25 stock company fails or refuses without reasonable cause to comply
26 with the reporting requirements of this subsection and its insured
27 employer has complied with those reporting requirements, a penalty
28 of up to \$1,000 for each such failure or refusal shall be enforceable
29 on a petition filed by the "uninsured employer's fund" in a
30 summary proceeding before a judge of compensation upon notice to
31 the mutual association or stock company and any proceeds of the
32 penalty shall be paid into the "uninsured employer's fund."

33 c. On and after July 1, 1996 the Compensation Rating and
34 Inspection Bureau shall record and maintain the employer
35 identification numbers received from mutual associations and stock
36 companies pursuant to subsection b. of this section. The bureau
37 shall, upon request of the Division of Workers' Compensation,
38 provide to the division information, in a form and manner as
39 prescribed by the division, with respect to the workers'
40 compensation or employer's liability insurance coverage status of
41 employers in this State, including the employer identification
42 numbers.

43 d. On or before March 1, 1996 the Department of Banking and
44 Insurance shall provide to the Division of Workers' Compensation a
45 complete list of all employers engaged in business in this State who
46 have been authorized, pursuant to the provisions of R.S.34:15-77 et
47 seq., to self-insure for the payment of compensation. After that
48 date, the department shall continue to provide notification to the

1 division, in a form and manner as prescribed by the division, of any
2 newly approved self-insured employer or the ~~recision~~ rescission
3 of the authority for any previously approved employer to self-
4 insure. On or before July 1, 2008 and thereafter, as may be
5 requested by the division and in a form and manner as prescribed by
6 the division, the Department of Banking and Insurance shall provide
7 to the division a complete list of all mutual associations and stock
8 companies authorized to write workers' compensation or
9 employer's liability insurance coverage on risks in the State.
10 (cf: P.L.1995, c.393, s.2)

11

12 3. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill strengthens enforcement of the requirement that
18 employers provide workers' compensation coverage, by increasing
19 the penalties against certain employers who fail to provide coverage
20 or fail to provide proof of coverage and imposing penalties against
21 insurers who fail to provide required employer identification
22 numbers when filing workers' compensation insurance policies with
23 the State.

24 Specifically, the bill:

25 1. Increases the level of an offense of an employer failing to
26 provide required workers' compensation coverage from a disorderly
27 persons offense to a crime of the fourth degree and, if the failure is
28 a knowing failure, from a crime of the fourth degree to a crime of
29 the second degree, and the cases for which the higher criminal
30 penalties apply are changed from willful failures to provide the
31 required coverage to knowing failures to provide the required
32 coverage;

33 2. Establishes a rebuttable presumption that an employer is not
34 insured if the employer fails to provide proof of coverage when the
35 division make a written request for proof;

36 3. Establishes a rebuttable presumption that an employer has
37 established a successor firm if two firms share at least three out of
38 nine listed characteristics;

39 4. Adds vice-president to the specified officers of a corporation
40 who are liable for failure to provide coverage, and makes all
41 indicated officers liable regardless of whether they are actively
42 engaged in the corporate business;

43 5. Imposes penalties of up to \$1,000 against insurers who fail
44 to provide required employer identification numbers when filing
45 workers' compensation insurance policies with the State; and

46 6. Requires the Department of Banking and Insurance to
47 provide to the Division of Workers' Compensation in the
48 Department of Labor and Workforce Development a complete list

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6

- 1 of all mutual associations and stock companies authorized to write
- 2 workers' compensation or employer's liability insurance coverage
- 3 on risks in the State.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 2967

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2008

The Assembly Labor Committee reports favorably and with committee amendments Assembly Bill No. 2967.

This bill, as amended by the committee, strengthens enforcement of the requirement that employers provide workers' compensation coverage, by increasing the penalties against certain employers who fail to provide coverage or fail to provide proof of coverage and imposing penalties against insurers who fail to provide required employer identification numbers when filing workers' compensation insurance policies with the State.

Specifically, the bill:

1. Establishes a rebuttable presumption that an employer is not insured if the employer fails to provide proof of coverage when the division makes a written request for proof;
2. Establishes a rebuttable presumption that an employer has established a successor firm if two firms share at least three out of nine listed characteristics;
3. Adds vice-president to the specified officers of a corporation who are liable for failure to provide coverage, and makes all indicated officers liable regardless of whether they are actively engaged in the corporate business;
4. Increases the assessment for failure to render timely payment of compensation from \$1,000 to \$5,000;
5. Imposes penalties of up to \$1,000 against insurers who fail to provide required employer identification numbers when filing workers' compensation insurance policies with the State; and
6. Requires the Department of Banking and Insurance to provide to the Division of Workers' Compensation in the Department of Labor and Workforce Development a complete list of all mutual associations and stock companies authorized to write workers' compensation or employer's liability insurance coverage on risks in the State.

COMMITTEE AMENDMENTS

The amendments adopted by the committee:

1. Eliminate the provisions of the bill which would have increased the degree of the crime for a knowing violation from second

to fourth degree, and would have increased the offense for a violation without knowledge from a disorderly persons offense to a crime of the fourth degree;

b. Clarify that the standard for the violation which is a crime of the fourth degree is a “knowing” standard, not “willful,” as the law currently provides, and not “with knowledge of the requirements of R.S. 34:15-20 et seq.,” as the bill would currently change the “willful” standard;

c. Clarify that any officer of a corporation who is actively involved in the corporate business, may be liable for a failure to provide workers’ compensation coverage; and

d. Provide that the “assessment” which may be imposed for failure to make timely payment of compensation shall instead be a “penalty,” so as to ensure that the penalty shall be recoverable in any related bankruptcy proceeding. Generally, “assessments” are dischargeable in bankruptcy; “penalties” are not; therefore, this change will facilitate recovery of the penalty.