

# 34:15-104

## LEGISLATIVE HISTORY CHECKLIST

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**LAWS OF:** 2004 **CHAPTER:** 179

**NJSA:** 34:15-104 (Concerns the workers' compensation security funds)

**BILL NO** S1555 (Substituted for A2871)

**SPONSOR(S):** Lesniak and others

**DATE INTRODUCED:** May 6, 2004

**COMMITTEE:** **ASSEMBLY:**  
**SENATE** Labor

**AMENDED DURING PASSAGE:** Yes

**DATE OF PASSAGE:** **ASSEMBLY:** November 15, 2004

**SENATE:** December 13, 2004

**DATE OF APPROVAL:** December 22, 2004

**FOLLOWING ARE ATTACHED IF AVAILABLE:**

[FINAL TEXT OF BILL](#) 1<sup>st</sup> reprint enacted

**S1555**

[SPONSOR'S STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** **ASSEMBLY:** No

[SENATE:](#) [Yes](#)

[FLOOR AMENDMENT STATEMENT:](#) [Yes](#)

**LEGISLATIVE FISCAL ESTIMATE:** No

**A2871**

[SPONSOR'S STATEMENT:](#) (Begins on page 9 of original bill) [Yes](#)

**COMMITTEE STATEMENT:** [ASSEMBLY:](#) [Yes](#)

**SENATE:** No

**FLOOR AMENDMENT STATEMENT:** No

**LEGISLATIVE FISCAL ESTIMATE:** No

**VETO MESSAGE:** No

**GOVERNOR'S PRESS RELEASE ON SIGNING:** No

**FOLLOWING WERE PRINTED:**

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**REPORTS:**

No

**HEARINGS:**

No

**NEWSPAPER ARTICLES:**

No

P.L. 2004, CHAPTER 179, *approved December 22, 2004*  
Senate, No. 1555 (*First Reprint*)

1 AN ACT concerning the workers' compensation security funds and  
2 amending and repealing various sections of chapter 15 of Title 34  
3 of the Revised Statutes.

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

7  
8 1. R.S.34:15-104 is amended to read as follows:

9 34:15-104. Definitions. As used in this article, unless the context  
10 or subject matter otherwise requires:

11 ["Stock fund"] "Fund" means the [stock] workers' compensation  
12 security fund created by [this article] R.S.34:15-105.

13 ["Mutual fund" means the mutual workers' compensation security  
14 fund created by this article.

15 "Funds" means the stock fund and the mutual fund.

16 "Fund" means either the stock fund or the mutual fund as the  
17 context may require.]

18 "Fund year" means the calendar year.

19 ["Stock carrier" means any stock corporation authorized to transact  
20 the business of workers' compensation insurance in this State, except  
21 an insolvent stock carrier.

22 "Mutual carrier"] "Carrier" means any stock corporation,  
23 reciprocal or association organized and operating on the mutual plan,  
24 authorized to transact the business of workers' compensation insurance  
25 in this State, except an insolvent [mutual] carrier.

26 ["Carrier" means either a stock carrier or a mutual carrier, as the  
27 context may require.]

28 "Insolvent [stock] carrier" ["or insolvent mutual carrier"] means  
29 a [stock] carrier [or a mutual carrier, as the case may be,] which has  
30 been determined to be insolvent, or for which or for the assets of  
31 which a receiver has been appointed by a court or public officer of  
32 competent jurisdiction and authority.

33 ["Compensation,"] "Covered claims" means "compensation,"  
34 "benefits," "death benefits," and "payments of losses" [means  
35 payments] with respect to the injury or death of workers under this  
36 chapter, R.S. 34:15-1 et seq., or the federal "Longshore and Harbor  
37 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.),  
38 arising from coverage of risks located or resident in this State <sup>1</sup>[and  
39 secured through a standard, primary workers' compensation policy.

**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:**

<sup>1</sup> Assembly floor amendments adopted October 25, 2004.

1 Claims made under any excess or reinsurance policies are not  
2 compensable by the fund]<sup>1</sup>.

3 "Compensation rate" means the rate of compensation provided by  
4 the workers' compensation act, R.S.34:15-1 et seq.  
5 (cf: P.L.1987, c.250, s.1)

6  
7 2. R.S.34:15-105 is amended to read as follows:

8 34:15-105. There is hereby created a fund to be known as "the  
9 [stock] workers' compensation security fund," for the purpose of  
10 assuring to persons entitled thereto the compensation provided by this  
11 chapter, R.S.34:15-1 et seq., or the federal "Longshore and Harbor  
12 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et  
13 seq.), or both, for employments insured in insolvent [stock] carriers  
14 and for the purpose of providing money for first year annual  
15 adjustments for benefit payments and supplemental payments during  
16 fiscal years 1984 and 1985 provided for by [this 1980 amendatory and  
17 supplementary act.] P.L.1980, c.83 (C.34:15-95.4 et al.). Such fund  
18 shall be applicable to the payment of valid claims for compensation or  
19 death benefits heretofore or hereafter made pursuant to this chapter or  
20 the federal "Longshore and Harbor Workers' Compensation Act," 44  
21 Stat. 1424 (33 U.S.C. s. 901 et seq.), and remaining unpaid, in whole  
22 or in part, by reason of the default, after March 26, 1935, of an  
23 insolvent [stock] carrier. Expenses of administration also shall be  
24 paid from the fund as herein provided. Such fund shall consist of all  
25 contributions received and paid into the fund by [stock] carriers, as  
26 herein defined, all property and securities acquired by and through the  
27 use of moneys belonging to the fund, and of interest earned upon  
28 moneys deposited or invested as herein provided. The fund shall be  
29 administered by the Commissioner of Banking and Insurance in  
30 accordance with the provisions of this chapter.

31 Compensation pursuant to the federal "Longshore and Harbor  
32 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et  
33 seq.), shall be payable under this article only with respect to coverage  
34 or risks located or resident in this State. The insolvency, bankruptcy,  
35 or dissolution of the insured shall effect a termination of compensation  
36 provided under this article for claims arising under the federal  
37 "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424  
38 (33 U.S.C. s.901 et seq.).  
39 (cf: P.L.1987, c.250, s.2)

40  
41 3. R.S.34:15-106 is amended to read as follows:

42 34:15-106. Returns by [stock] carriers; "net written premiums,"  
43 defined. Every [stock] carrier shall, on or before September 1, 1935,  
44 file with the State Treasurer and with the Commissioner of Banking  
45 and Insurance identical returns, under oath, on a form to be prescribed

1 and furnished by the commissioner, stating the amount of net written  
2 premiums for the six months' period ending June 30, 1935, on policies  
3 issued, renewed or extended by such carrier, to insure payment of  
4 compensation pursuant to this chapter or the federal "Longshore and  
5 Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901  
6 et seq.), as authorized by this article. For the purposes of this article  
7 "net written premiums" shall mean gross written premiums less return  
8 premiums on policies returned not taken, and on policies canceled.  
9 Thereafter, on or before the first day of March and September of each  
10 year, each such carrier shall file similar identical returns, stating the  
11 amount of such net written premiums for the six months' period  
12 ending, respectively, on the preceding December 31st and June 30th,  
13 on policies issued, renewed or extended by such carrier.

14 (cf: P.L.1987, c.250, s.3)

15

16 4. R.S.34:15-107 is amended to read as follows:

17 34:15-107. Contributions to **[stock]** the fund. For the privilege of  
18 carrying on the business of **[workmen's]** workers' compensation  
19 insurance in this State, every **[stock]** carrier shall pay into the **[stock]**  
20 fund on the first day of September, nineteen hundred thirty-five, a sum  
21 equal to one per cent of its net written premiums as shown by the  
22 return hereinbefore prescribed for the period ending June thirtieth, one  
23 thousand nine hundred and thirty-five, and thereafter each **[such**  
24 **stock]** carrier, upon filing each semiannual return, shall pay a sum  
25 equal to one percent of its net written premiums for the period covered  
26 by such return.

27 (cf: R.S.34:15-107)

28

29 5. R.S.34:15-108 is amended to read as follows:

30 34:15-108. When the aggregate amount of all such payments into  
31 the **[stock]** fund, together with accumulated interest thereon, less all  
32 its expenditures and known liabilities, becomes equal to 5% of the loss  
33 reserves of all **[stock]** carriers for the payment of benefits under this  
34 chapter or the federal "Longshore and Harbor Workers' Compensation  
35 Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as authorized by this  
36 article, as of December 31, next preceding, no further contributions to  
37 the fund shall be required to be made. But whenever thereafter, the  
38 amount of the fund shall be reduced below 5% of such loss reserves as  
39 of said date by reason of payments from and known liabilities of the  
40 fund, then contributions to the fund may be resumed forthwith  
41 pursuant to regulations of the Commissioner of Banking and  
42 Insurance, and may continue until the fund, over and above its known  
43 liabilities, shall be equal to not less than 3% nor more than 5% of such  
44 reserves.

45 The Commissioner of Banking and Insurance may by regulation  
46 provide that the amount of the **[stock]** fund may fluctuate between

1 3% and 5% of loss reserves of all [stock] carriers whenever he finds  
2 it to be in the best interest of the fund or advisable for its proper  
3 administration [; except that no regulation shall require a stock carrier  
4 to make an additional contribution to the stock fund during the 12  
5 month period following the effective date of this amendatory and  
6 supplementary act].

7 (cf: P.L.1987, c.250, s.4)

8

9 6. R.S.34:15-109 is amended to read as follows:

10 34:15-109. Regulations; examination of correctness of returns;  
11 penalties

12 The [commissioner of banking and insurance] Commissioner of  
13 Banking and Insurance may adopt, amend and enforce rules and  
14 regulations necessary for the proper administration of the [stock]  
15 fund. In the event any [stock] carrier shall fail to file any return or  
16 make any payment required by this article, or in case the commissioner  
17 [of banking and insurance] shall have cause to believe that any return  
18 or other statement filed is false or inaccurate in any particular, or that  
19 any payment made is incorrect, he shall have full authority to examine  
20 all the books and records of the carrier for the purpose of ascertaining  
21 the facts and shall determine the correct amount to be paid and may  
22 proceed in any court of competent jurisdiction to recover for the  
23 benefit of the fund any sums shown to be due upon such examination  
24 and determination. Any [stock] carrier which fails to make any  
25 statement as required by [this act] R.S.34:15-103 et seq., or to pay  
26 any contribution to the [stock] fund when due, shall thereby forfeit to  
27 the fund a penalty of five per cent of the amount of unpaid  
28 contribution determined to be due as provided by [this act]  
29 R.S.34:15-103 et seq. plus one per cent of such amount for each  
30 month of delay, or fraction thereof, after the expiration of the first  
31 month of such delay, but the commissioner [of banking and  
32 insurance] may upon good cause shown extend the time for filing of  
33 such return or payment. The commissioner [of banking and  
34 insurance] shall revoke the certificate of authority to do business in  
35 this State of any carrier which shall fail to comply with the provisions  
36 of this article or to pay any penalty imposed in accordance with this  
37 article.

38 (cf: R.S.34:15-109)

39

40 7. R.S.34:15-110 is amended to read as follows:

41 34:15-110. Fund kept separate; investment; Treasurer may sell  
42 securities.

43 The [stock] fund created by [this act] R.S.34:15-105 shall be  
44 separate and apart from any other fund so created and from all other  
45 State moneys. The [state treasurer] State Treasurer shall be the

1 custodian of such fund; and all disbursements from the fund shall be  
2 made by the [state treasurer] State Treasurer upon vouchers signed  
3 by the [commissioner of banking and insurance] Commissioner of  
4 Banking and Insurance as hereinafter provided. The moneys of the  
5 fund may be invested by the [state treasurer] State Treasurer only in  
6 the bonds or securities which are the direct obligations or which are  
7 guaranteed as to principal and interest by the United States or of this  
8 State. The [state treasurer] State Treasurer may sell any of the  
9 securities in which the fund is invested, if advisable for its proper  
10 administration or in the best interests of such fund, and all earnings  
11 from the investments of such fund shall be credited to such fund.

12 (cf: R.S.34:15-110)

13

14 8. R.S.34:15-111 is amended to read as follows:

15 34:15-111. Payment of claims on application therefor; fund may  
16 recover against insurance carrier but not from employer, except as  
17 otherwise provided. A valid claim for compensation or death benefits,  
18 or installments thereof, heretofore or hereafter made pursuant to this  
19 chapter or the federal "Longshore and Harbor Workers' Compensation  
20 Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as authorized by this  
21 article, which has remained or shall remain due and unpaid for 60 days,  
22 by reason of default by an insolvent [stock] carrier, shall be paid from  
23 the [stock] fund in the manner provided in this section. Any person  
24 in interest may file with the Commissioner of Banking and Insurance  
25 an application for payment of compensation or death benefits from the  
26 [stock] fund on a form to be prescribed and furnished by the  
27 commissioner. If there has been an award, final or otherwise, a  
28 certified copy thereof shall accompany the application. Such  
29 commissioner shall thereupon certify to the State Treasurer such  
30 award for payment according to the terms of the same, whereupon  
31 payment shall be made by the State Treasurer:

32 [Payment of compensation from the stock fund shall give the fund  
33 no right of recovery against the employer.

34 An] Any person recovering under R.S.34:15-103 et seq. shall be  
35 deemed to have assigned his rights under the policy to the fund to the  
36 extent of his recovery from the fund. Every insured or claimant  
37 seeking the protection of R.S.34:15-103 et seq. shall cooperate with  
38 the fund to the same extent as that person would have been required  
39 to cooperate with the insolvent carrier. The fund shall have no cause  
40 of action against the insured employer or the insolvent carrier for any  
41 sums it has paid out, except those causes of action that the insolvent  
42 carrier would have had if those sums had been paid by the insolvent  
43 carrier, including, but not limited to, the right to receive the benefit of,  
44 and to enforce any and all obligations on the part of the insured, to  
45 either fund directly (or indirectly through a third party administrator).

1 or secure the payment of, compensation due under the policies of the  
2 insolvent carrier, to the extent of claims paid. The foregoing vests the  
3 fund with an exclusive cause of action against the insured and includes  
4 the right to enforce against the insured the rights of the carrier with  
5 respect to any obligation of the insured to reimburse the carrier for  
6 deductibles or pay claims within a deductible. Further, the fund is  
7 vested with a first lien in any collateral provided by the insured to the  
8 carrier to secure the insured's performance, to the extent of claims  
9 paid by the fund, which lien can be perfected by notice to the  
10 liquidator. In the case of an insolvent insurer operating on a plan with  
11 an assessment liability, payments of claims of the fund shall not  
12 operate to reduce the liability of insureds to the receiver, liquidator or  
13 statutory successor for unpaid assessments.

14 The receiver, liquidator, or statutory successor of an insolvent  
15 insurer shall be bound by settlements of covered claims by the fund or  
16 its representatives. The court having jurisdiction shall grant a claim  
17 priority equal to that to which the claimant would have been entitled  
18 in the absence of R.S.34:15-103 et seq. against the assets of the  
19 insolvent carrier. The expenses of the fund or similar organization in  
20 handling claims shall be accorded the same priority as the liquidator's  
21 expenses.

22 Except as otherwise provided in this section, an employer may pay  
23 such award or part thereof in advance of payment from the [stock]  
24 fund and shall thereupon be subrogated to the rights of the employee  
25 or other party in interest against [such] the fund to the extent of the  
26 amount so paid.

27 The State Treasurer as custodian of the [stock] fund shall be  
28 entitled to recover the sum of all liabilities of such insolvent carrier  
29 assumed by such fund from such carrier, its receiver, liquidator,  
30 rehabilitator or trustee in bankruptcy and may prosecute an action or  
31 other proceedings therefor. All moneys recovered in any such action  
32 or proceedings shall forthwith be placed to the credit of the [stock]  
33 fund by the State Treasurer to reimburse the [stock] fund to the  
34 extent of the moneys so recovered and paid.

35 (cf: P.L.1987, c.250, s.5)

36

37 9. R.S.34:15-117 is amended to read as follows:

38 34:15-117. Insolvency of [stock or mutual] carrier; notice to  
39 [workmen's compensation bureau] Division of Workers'  
40 Compensation; report of conditions.

41 Forthwith upon any carrier becoming [an] insolvent [stock carrier,  
42 or an insolvent mutual carrier, as the case may be], the [commissioner  
43 of banking and insurance] Commissioner of Banking and Insurance  
44 shall so notify the [workmen's compensation bureau] Division of  
45 Workers' Compensation, and the [workmen's compensation bureau]



1 division shall immediately advise the commissioner [of banking and  
2 insurance]: (a) of all claims for compensation pending or thereafter  
3 made against an employer insured by such insolvent carrier, or against  
4 such insolvent carrier; (b) of all unpaid or continuing agreements,  
5 awards or decisions made upon claims prior to or after the date of  
6 such notice from such commissioner; and (c) of all appeals from or  
7 applications for modifications or rescission or review of such  
8 agreements, awards or decisions.  
9 (cf: R.S.34:15-117)

10

11 10. R.S.34:15-118 is amended to read as follows:

12 34:15-118. Powers and duties of [commissioner of banking and  
13 insurance] Commissioner of Banking and Insurance with respect to  
14 compensation claims.15 The [commissioner of banking and insurance] Commissioner of  
16 Banking and Insurance or his duly authorized representative may  
17 investigate and may defend before the [workmen's compensation  
18 bureau] Division of Workers' Compensation or any court any or all  
19 claims for compensation against an employer insured by an insolvent  
20 carrier or against such insolvent carrier and may prosecute any  
21 pending appeal or may appeal from or make application for  
22 modification or rescission or review of an agreement, award or decision  
23 against such employer or insolvent carrier. Until all such claims for  
24 compensation are closed and all such awards thereon are paid the  
25 commissioner [of banking and insurance], as administrator of the  
26 [funds] fund, shall be a party in interest in respect to all such claims,  
27 agreements and awards. For the purposes of [this act such]  
28 R.S.34:15-103 et seq. the commissioner shall have exclusive power to  
29 select and employ such counsel, clerks and assistants as may be  
30 deemed necessary and to fix and determine their powers and duties;  
31 and he may also, in his discretion, arrange with any carrier or carriers  
32 to investigate and defend any or all such claims and to liquidate and  
33 pay such as are valid and such commissioner may from time to time  
34 reimburse from the [appropriate] fund, such carrier or carriers for  
35 compensation payments so made together with reasonable allowance  
36 for the services so rendered.

37 (cf: R.S.34:15-118)

38

39 11. R.S.34:15-119 is amended to read as follows:

40 34:15-119. Administration expenses; report to legislature.

41 The expense of administering the [stock] fund shall be paid out of  
42 the [stock] fund [and the expense of administering the mutual fund  
43 shall be paid out of the mutual fund]. The [commissioner of banking  
44 and insurance] Commissioner of Banking and Insurance shall serve as  
45 administrator of [each] the fund without additional compensation, but

1 may be allowed and paid from [either] the fund those expenses  
2 incurred in the performance of his duties in connection with [that] the  
3 fund. The compensation of those persons employed by such  
4 commissioner shall be deemed administration expenses payable from  
5 the fund in the manner provided in [paragraph eight of this act]  
6 R.S.34:15-110. Such commissioner shall include in his regular report  
7 to the [legislature] Legislature a statement of the expense of  
8 administering [each of such funds] the fund for the preceding year.  
9 (cf: R.S.34:15-119)

10

11 12. R.S.34:15-120 is amended to read as follows:

12 34:15-120. No deposit of securities required by contributing  
13 carriers.14 Contributions made by any [stock or mutual] carrier to the [funds]  
15 fund created by [this act] R.S.34:15-105 shall relieve such carriers  
16 from filing any surety bond or making any deposit of securities  
17 required under the provisions of any law of this State for the purpose  
18 of securing the payment of workmen's compensation benefits.  
19 (cf: R.S.34:15-120)

20

21 13. R.S.34:15-112, 34:15-113, 34:15-114, 34:15-115 and 34:15-  
22 116 are repealed.

23

24 14. This act shall take effect immediately.

25

26

27

28

29 Combines separate stock and mutual workers' compensation insurance  
30 security funds into a single fund.

# SENATE, No. 1555

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## STATE OF NEW JERSEY

### 211th LEGISLATURE

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INTRODUCED MAY 6, 2004

**Sponsored by:**

**Senator RAYMOND J. LESNIAK**

**District 20 (Union)**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Combines separate stock and mutual workers' compensation insurance security funds into a single fund.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 10/26/2004)

1 AN ACT concerning the workers' compensation security funds and  
2 amending and repealing various sections of chapter 15 of Title 34  
3 of the Revised Statutes.

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

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12 security fund created by [this article] R.S.34:15-105.

13 ["Mutual fund" means the mutual workers' compensation security  
14 fund created by this article.

15 "Funds" means the stock fund and the mutual fund.

16 "Fund" means either the stock fund or the mutual fund as the  
17 context may require.]

18 "Fund year" means the calendar year.

19 ["Stock carrier" means any stock corporation authorized to transact  
20 the business of workers' compensation insurance in this State, except  
21 an insolvent stock carrier.

22 "Mutual carrier"] "Carrier" means any stock corporation,  
23 reciprocal or association organized and operating on the mutual plan,  
24 authorized to transact the business of workers' compensation insurance  
25 in this State, except an insolvent [mutual] carrier.

26 ["Carrier" means either a stock carrier or a mutual carrier, as the  
27 context may require.]

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29 a [stock] carrier [or a mutual carrier, as the case may be,] which has  
30 been determined to be insolvent, or for which or for the assets of  
31 which a receiver has been appointed by a court or public officer of  
32 competent jurisdiction and authority.

33 ["Compensation,"] "Covered claims" means "compensation,"  
34 "benefits," "death benefits," and "payments of losses" [means  
35 payments] with respect to the injury or death of workers under this  
36 chapter, R.S.34:15-1 et seq., or the federal "Longshore and Harbor  
37 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et  
38 seq.), arising from coverage of risks located or resident in this State  
39 and secured through a standard, primary workers' compensation  
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42 "Compensation rate" means the rate of compensation provided by

**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 the workers' compensation act, R.S.34:15-1 et seq.  
2 (cf: P.L.1987, c.250, s.1)

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9 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et  
10 seq.), or both, for employments insured in insolvent [stock] carriers  
11 and for the purpose of providing money for first year annual  
12 adjustments for benefit payments and supplemental payments during  
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15 shall be applicable to the payment of valid claims for compensation or  
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18 Stat. 1424 (33 U.S.C. s. 901 et seq.), and remaining unpaid, in whole  
19 or in part, by reason of the default, after March 26, 1935, of an  
20 insolvent [stock] carrier. Expenses of administration also shall be  
21 paid from the fund as herein provided. Such fund shall consist of all  
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28 Compensation pursuant to the federal "Longshore and Harbor  
29 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et  
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31 or risks located or resident in this State. The insolvency, bankruptcy,  
32 or dissolution of the insured shall effect a termination of compensation  
33 provided under this article for claims arising under the federal  
34 "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424  
35 (33 U.S.C. s.901 et seq.).  
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44 premiums for the six months' period ending June 30, 1935, on policies  
45 issued, renewed or extended by such carrier, to insure payment of  
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1 Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901  
2 et seq.), as authorized by this article. For the purposes of this article  
3 "net written premiums" shall mean gross written premiums less return  
4 premiums on policies returned not taken, and on policies canceled.  
5 Thereafter, on or before the first day of March and September of each  
6 year, each such carrier shall file similar identical returns, stating the  
7 amount of such net written premiums for the six months' period  
8 ending, respectively, on the preceding December 31st and June 30th,  
9 on policies issued, renewed or extended by such carrier.

10 (cf: P.L.1987, c.250, s.3)

11

12 4. R.S.34:15-107 is amended to read as follows:

13 34:15-107. Contributions to [stock] the fund. For the privilege of  
14 carrying on the business of [workmen's] workers' compensation  
15 insurance in this State, every [stock] carrier shall pay into the [stock]  
16 fund on the first day of September, nineteen hundred thirty-five, a sum  
17 equal to one per cent of its net written premiums as shown by the  
18 return hereinbefore prescribed for the period ending June thirtieth, one  
19 thousand nine hundred and thirty-five, and thereafter each [such  
20 stock] carrier, upon filing each semiannual return, shall pay a sum  
21 equal to one percent of its net written premiums for the period covered  
22 by such return.

23 (cf: R.S.34:15-107)

24

25 5. R.S.34:15-108 is amended to read as follows:

26 34:15-108. When the aggregate amount of all such payments into  
27 the [stock] fund, together with accumulated interest thereon, less all  
28 its expenditures and known liabilities, becomes equal to 5% of the loss  
29 reserves of all [stock] carriers for the payment of benefits under this  
30 chapter or the federal "Longshore and Harbor Workers' Compensation  
31 Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as authorized by this  
32 article, as of December 31, next preceding, no further contributions to  
33 the fund shall be required to be made. But whenever thereafter, the  
34 amount of the fund shall be reduced below 5% of such loss reserves as  
35 of said date by reason of payments from and known liabilities of the  
36 fund, then contributions to the fund may be resumed forthwith  
37 pursuant to regulations of the Commissioner of Banking and  
38 Insurance, and may continue until the fund, over and above its known  
39 liabilities, shall be equal to not less than 3% nor more than 5% of such  
40 reserves.

41 The Commissioner of Banking and Insurance may by regulation  
42 provide that the amount of the [stock] fund may fluctuate between  
43 3% and 5% of loss reserves of all [stock] carriers whenever he finds  
44 it to be in the best interest of the fund or advisable for its proper  
45 administration [; except that no regulation shall require a stock carrier

1 to make an additional contribution to the stock fund during the 12  
2 month period following the effective date of this amendatory and  
3 supplementary act].

4 (cf: P.L.1987, c.250, s.4)

5

6 6. R.S.34:15-109 is amended to read as follows:

7 34:15-109. Regulations; examination of correctness of returns;  
8 penalties

9 The [commissioner of banking and insurance] Commissioner of  
10 Banking and Insurance may adopt, amend and enforce rules and  
11 regulations necessary for the proper administration of the [stock]  
12 fund. In the event any [stock] carrier shall fail to file any return or  
13 make any payment required by this article, or in case the commissioner  
14 [of banking and insurance] shall have cause to believe that any return  
15 or other statement filed is false or inaccurate in any particular, or that  
16 any payment made is incorrect, he shall have full authority to examine  
17 all the books and records of the carrier for the purpose of ascertaining  
18 the facts and shall determine the correct amount to be paid and may  
19 proceed in any court of competent jurisdiction to recover for the  
20 benefit of the fund any sums shown to be due upon such examination  
21 and determination. Any [stock] carrier which fails to make any  
22 statement as required by [this act] R.S.34:15-103 et seq., or to pay  
23 any contribution to the [stock] fund when due, shall thereby forfeit to  
24 the fund a penalty of five per cent of the amount of unpaid  
25 contribution determined to be due as provided by [this act]  
26 R.S.34:15-103 et seq. plus one per cent of such amount for each  
27 month of delay, or fraction thereof, after the expiration of the first  
28 month of such delay, but the commissioner [of banking and  
29 insurance] may upon good cause shown extend the time for filing of  
30 such return or payment. The commissioner [of banking and  
31 insurance] shall revoke the certificate of authority to do business in  
32 this State of any carrier which shall fail to comply with the provisions  
33 of this article or to pay any penalty imposed in accordance with this  
34 article.

35 (cf: R.S.34:15-109)

36

37 7. R.S.34:15-110 is amended to read as follows:

38 34:15-110. Fund kept separate; investment; Treasurer may sell  
39 securities.

40 The [stock] fund created by [this act] R.S.34:15-105 shall be  
41 separate and apart from any other fund so created and from all other  
42 State moneys. The [state treasurer] State Treasurer shall be the  
43 custodian of such fund; and all disbursements from the fund shall be  
44 made by the [state treasurer] State Treasurer upon vouchers signed  
45 by the [commissioner of banking and insurance] Commissioner of

1 Banking and Insurance as hereinafter provided. The moneys of the  
2 fund may be invested by the [state treasurer] State Treasurer only in  
3 the bonds or securities which are the direct obligations or which are  
4 guaranteed as to principal and interest by the United States or of this  
5 State. The [state treasurer] State Treasurer may sell any of the  
6 securities in which the fund is invested, if advisable for its proper  
7 administration or in the best interests of such fund, and all earnings  
8 from the investments of such fund shall be credited to such fund.  
9 (cf: R.S.34:15-110)

10

11 8. R.S.34:15-111 is amended to read as follows:

12 34:15-111. Payment of claims on application therefor; fund may  
13 recover against insurance carrier but not from employer, except as  
14 otherwise provided. A valid claim for compensation or death benefits,  
15 or installments thereof, heretofore or hereafter made pursuant to this  
16 chapter or the federal "Longshore and Harbor Workers' Compensation  
17 Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as authorized by this  
18 article, which has remained or shall remain due and unpaid for 60 days,  
19 by reason of default by an insolvent [stock] carrier, shall be paid from  
20 the [stock] fund in the manner provided in this section. Any person  
21 in interest may file with the Commissioner of Banking and Insurance  
22 an application for payment of compensation or death benefits from the  
23 [stock] fund on a form to be prescribed and furnished by the  
24 commissioner. If there has been an award, final or otherwise, a  
25 certified copy thereof shall accompany the application. Such  
26 commissioner shall thereupon certify to the State Treasurer such  
27 award for payment according to the terms of the same, whereupon  
28 payment shall be made by the State Treasurer:

29 [Payment of compensation from the stock fund shall give the fund  
30 no right of recovery against the employer.

31 An] Any person recovering under R.S.34:15-103 et seq. shall be  
32 deemed to have assigned his rights under the policy to the fund to the  
33 extent of his recovery from the fund. Every insured or claimant  
34 seeking the protection of R.S.34:15-103 et seq. shall cooperate with  
35 the fund to the same extent as that person would have been required  
36 to cooperate with the insolvent carrier. The fund shall have no cause  
37 of action against the insured employer or the insolvent carrier for any  
38 sums it has paid out, except those causes of action that the insolvent  
39 carrier would have had if those sums had been paid by the insolvent  
40 carrier, including, but not limited to, the right to receive the benefit of,  
41 and to enforce any and all obligations on the part of the insured, to  
42 either fund directly (or indirectly through a third party administrator),  
43 or secure the payment of, compensation due under the policies of the  
44 insolvent carrier, to the extent of claims paid. The foregoing vests the  
45 fund with an exclusive cause of action against the insured and includes  
46 the right to enforce against the insured the rights of the carrier with



1 respect to any obligation of the insured to reimburse the carrier for  
2 deductibles or pay claims within a deductible. Further, the fund is  
3 vested with a first lien in any collateral provided by the insured to the  
4 carrier to secure the insured's performance, to the extent of claims  
5 paid by the fund, which lien can be perfected by notice to the  
6 liquidator. In the case of an insolvent insurer operating on a plan with  
7 an assessment liability, payments of claims of the fund shall not  
8 operate to reduce the liability of insureds to the receiver, liquidator or  
9 statutory successor for unpaid assessments.

10 The receiver, liquidator, or statutory successor of an insolvent  
11 insurer shall be bound by settlements of covered claims by the fund or  
12 its representatives. The court having jurisdiction shall grant a claim  
13 priority equal to that to which the claimant would have been entitled  
14 in the absence of R.S.34:15-103 et seq. against the assets of the  
15 insolvent carrier. The expenses of the fund or similar organization in  
16 handling claims shall be accorded the same priority as the liquidator's  
17 expenses.

18 Except as otherwise provided in this section, an employer may pay  
19 such award or part thereof in advance of payment from the [stock]  
20 fund and shall thereupon be subrogated to the rights of the employee  
21 or other party in interest against [such] the fund to the extent of the  
22 amount so paid.

23 The State Treasurer as custodian of the [stock] fund shall be  
24 entitled to recover the sum of all liabilities of such insolvent carrier  
25 assumed by such fund from such carrier, its receiver, liquidator,  
26 rehabilitator or trustee in bankruptcy and may prosecute an action or  
27 other proceedings therefor. All moneys recovered in any such action  
28 or proceedings shall forthwith be placed to the credit of the [stock]  
29 fund by the State Treasurer to reimburse the [stock] fund to the  
30 extent of the moneys so recovered and paid.

31 (cf: P.L.1987, c.250, s.5)

32  
33 9. R.S.34:15-117 is amended to read as follows:

34 34:15-117. Insolvency of [stock or mutual] carrier; notice to  
35 [workmen's compensation bureau] Division of Workers'  
36 Compensation; report of conditions.

37 Forthwith upon any carrier becoming [an] insolvent [stock carrier,  
38 or an insolvent mutual carrier, as the case may be], the [commissioner  
39 of banking and insurance] Commissioner of Banking and Insurance  
40 shall so notify the [workmen's compensation bureau] Division of  
41 Workers' Compensation, and the [workmen's compensation bureau]  
42 division shall immediately advise the commissioner [of banking and  
43 insurance]: (a) of all claims for compensation pending or thereafter  
44 made against an employer insured by such insolvent carrier, or against  
45 such insolvent carrier; (b) of all unpaid or continuing agreements,

1 awards or decisions made upon claims prior to or after the date of  
2 such notice from such commissioner; and (c) of all appeals from or  
3 applications for modifications or recision or review of such  
4 agreements, awards or decisions.

5 (cf: R.S.34:15-117)

6

7 10. R.S.34:15-118 is amended to read as follows:

8 34:15-118. Powers and duties of [commissioner of banking and  
9 insurance] Commissioner of Banking and Insurance with respect to  
10 compensation claims.

11 The [commissioner of banking and insurance] Commissioner of  
12 Banking and Insurance or his duly authorized representative may  
13 investigate and may defend before the [workmen's compensation  
14 bureau] Division of Workers' Compensation or any court any or all  
15 claims for compensation against an employer insured by an insolvent  
16 carrier or against such insolvent carrier and may prosecute any  
17 pending appeal or may appeal from or make application for  
18 modification or recision or review of an agreement, award or decision  
19 against such employer or insolvent carrier. Until all such claims for  
20 compensation are closed and all such awards thereon are paid the  
21 commissioner [of banking and insurance], as administrator of the  
22 [funds] fund, shall be a party in interest in respect to all such claims,  
23 agreements and awards. For the purposes of [this act such]  
24 R.S.34:15-103 et seq. the commissioner shall have exclusive power to  
25 select and employ such counsel, clerks and assistants as may be  
26 deemed necessary and to fix and determine their powers and duties;  
27 and he may also, in his discretion, arrange with any carrier or carriers  
28 to investigate and defend any or all such claims and to liquidate and  
29 pay such as are valid and such commissioner may from time to time  
30 reimburse from the [appropriate] fund, such carrier or carriers for  
31 compensation payments so made together with reasonable allowance  
32 for the services so rendered.

33 (cf: R.S.34:15-118)

34

35 11. R.S.34:15-119 is amended to read as follows:

36 34:15-119. Administration expenses; report to legislature.

37 The expense of administering the [stock] fund shall be paid out of  
38 the [stock] fund [and the expense of administering the mutual fund  
39 shall be paid out of the mutual fund]. The [commissioner of banking  
40 and insurance] Commissioner of Banking and Insurance shall serve as  
41 administrator of [each] the fund without additional compensation, but  
42 may be allowed and paid from [either] the fund those expenses  
43 incurred in the performance of his duties in connection with [that] the  
44 fund. The compensation of those persons employed by such  
45 commissioner shall be deemed administration expenses payable from

1 the fund in the manner provided in [paragraph eight of this act]  
2 R.S.34:15-110. Such commissioner shall include in his regular report  
3 to the [legislature] Legislature a statement of the expense of  
4 administering [each of such funds] the fund for the preceding year.  
5 (cf: R.S.34:15-119)

6

7 12. R.S.34:15-120 is amended to read as follows:

8 34:15-120. No deposit of securities required by contributing  
9 carriers.

10 Contributions made by any [stock or mutual] carrier to the [funds]  
11 fund created by [this act] R.S.34:15-105 shall relieve such carriers  
12 from filing any surety bond or making any deposit of securities  
13 required under the provisions of any law of this State for the purpose  
14 of securing the payment of workmen's compensation benefits.  
15 (cf: R.S.34:15-120)

16

17 13. R.S. 34:15-112, 34:15-113, 34:15-114, 34:15-115 and 34:15-  
18 116 are repealed.

19

20 14. This act shall take effect immediately.

21

22

#### 23 STATEMENT

24

25 This bill revises and modernizes the workers' compensation  
26 insurance security fund system.

27 The bill merges the existing stock and mutual workers'  
28 compensation insurance security funds into one common fund. There  
29 is no longer any policy reason to maintain separate funds. Many  
30 mutuals have either demutualized or formed mutual holding companies  
31 with stock operating companies and there are fewer mutual carriers  
32 over which to spread an assessment, if necessary. In addition, the  
33 change will simplify the assessment process and the financial  
34 operations of the fund for the Department of Banking and Insurance  
35 and the State Treasurer.

36 The bill clarifies that the security required by the rules of the  
37 Compensation Rating and Inspection Bureau for those employers  
38 utilizing a large risk-large deductible workers compensation program,  
39 can be attached by the fund in the event of insolvency. The security  
40 is intended to make certain that funds are available to pay claims  
41 within the deductible. This becomes important when a carrier, which  
42 under New Jersey's large deductible program has first dollar  
43 responsibility to pay claims, becomes insolvent, and the security fund  
44 has to pay the claims within the deductible. If the employer does not  
45 reimburse the fund for those claims payments, the fund assumes the  
46 right of the insolvent insurer to recover those payments against the

1 security established by the employer for this purpose. This revision to  
2 the law will clarify and protect the fund's right to recover to the extent  
3 that the security fund has paid such claims.

4 The bill adds reciprocals to the definition of "carrier," under the  
5 law. Reciprocals are a recognized form of insurance company and  
6 such policyholders should be covered by the fund. The bill also  
7 clarifies that the security fund is responsible to pay only claims arising  
8 undr primary workers compensation policies.

# SENATE LABOR COMMITTEE

## STATEMENT TO

### SENATE, No. 1555

# STATE OF NEW JERSEY

DATED: JUNE 7, 2004

The Senate Labor Committee reports favorably Senate Bill No. 1555.

This bill revises and modernizes the workers' compensation insurance security fund system.

The bill merges the existing stock and mutual workers' compensation insurance security funds into one common fund. There is no longer any policy reason to maintain separate funds. Many mutuals have either demutualized or formed mutual holding companies with stock operating companies and there are fewer mutual carriers over which to spread an assessment, if necessary. The bill simplifies the assessment process and the financial operations of the fund for the Department of Banking and Insurance and the State Treasurer.

The bill clarifies that the security required by the rules of the Compensation Rating and Inspection Bureau for those employers utilizing a large risk-large deductible workers compensation program, can be attached by the fund in the event of insolvency. The security is intended to make certain that funds are available to pay claims within the deductible. This becomes important when a carrier, which under New Jersey's large deductible program has first dollar responsibility to pay claims, becomes insolvent, and the security fund has to pay the claims within the deductible. If the employer does not reimburse the fund for those claims payments, the fund assumes the right of the insolvent insurer to recover those payments against the security established by the employer for this purpose. This revision clarifies and protects the fund's right to recover to the extent that the security fund has paid such claims.

The bill adds reciprocals to the definition of "carrier," under the law. Reciprocals are a recognized form of insurance company and such policyholders should be covered by the fund. The bill also clarifies that the security fund is responsible to pay only claims arising under primary workers compensation policies.

STATEMENT TO  
**SENATE, No. 1555**

with Assembly Floor Amendments  
(Proposed by Assemblyman COHEN)

ADOPTED: OCTOBER 25, 2004

The Assembly amendments remove language from the bill which revises the definition of "covered claims." This language is being removed because the issue of whether a claim under an excess or reinsurance policy filed for payment by the Workers' Compensation Security Fund is currently before the courts.

# ASSEMBLY, No. 2871

## STATE OF NEW JERSEY 211th LEGISLATURE

INTRODUCED MAY 17, 2004

**Sponsored by:**

**Assemblyman NEIL M. COHEN**

**District 20 (Union)**

**Assemblyman FREDERICK SCALERA**

**District 36 (Bergen, Essex and Passaic)**

**SYNOPSIS**

Combines separate stock and mutual workers' compensation insurance security funds into a single fund.

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 6/18/2004)**

1 AN ACT concerning the workers' compensation security funds and  
2 amending and repealing various sections of chapter 15 of Title 34  
3 of the Revised Statutes.

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

7  
8 1. R.S.34:15-104 is amended to read as follows:

9 34:15-104. Definitions. As used in this article, unless the context  
10 or subject matter otherwise requires:

11 ["Stock fund"] "Fund" means the [stock] workers' compensation  
12 security fund created by [this article] R.S.34:15-105.

13 ["Mutual fund" means the mutual workers' compensation security  
14 fund created by this article.

15 "Funds" means the stock fund and the mutual fund.

16 "Fund" means either the stock fund or the mutual fund as the  
17 context may require.]

18 "Fund year" means the calendar year.

19 ["Stock carrier" means any stock corporation authorized to transact  
20 the business of workers' compensation insurance in this State, except  
21 an insolvent stock carrier.

22 "Mutual carrier"] "Carrier" means any stock corporation,  
23 reciprocal or association organized and operating on the mutual plan,  
24 authorized to transact the business of workers' compensation insurance  
25 in this State, except an insolvent [mutual] carrier.

26 ["Carrier" means either a stock carrier or a mutual carrier, as the  
27 context may require.]

28 "Insolvent [stock] carrier" ["or insolvent mutual carrier"] means  
29 a [stock] carrier [or a mutual carrier, as the case may be,] which has  
30 been determined to be insolvent, or for which or for the assets of  
31 which a receiver has been appointed by a court or public officer of  
32 competent jurisdiction and authority.

33 ["Compensation,"] "Covered claims" means "compensation,"  
34 "benefits," "death benefits," and "payments of losses" [means  
35 payments] with respect to the injury or death of workers under this  
36 chapter, R.S. 34:15-1 et seq., or the federal "Longshore and Harbor  
37 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.),  
38 arising from coverage of risks located or resident in this State and  
39 secured through a standard, primary workers' compensation policy.  
40 Claims made under any excess or reinsurance policies are not  
41 compensable by the fund.

42 "Compensation rate" means the rate of compensation provided by

**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 the workers' compensation act, R.S.34:15-1 et seq.  
2 (cf: P.L.1987, c.250, s.1)

3  
4 2. R.S.34:15-105 is amended to read as follows:

5 34:15-105. There is hereby created a fund to be known as "the  
6 **[stock]** workers' compensation security fund," for the purpose of  
7 assuring to persons entitled thereto the compensation provided by this  
8 chapter, R.S.34:15-1 et seq., or the federal "Longshore and Harbor  
9 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.),  
10 or both, for employments insured in insolvent **[stock]** carriers and for  
11 the purpose of providing money for first year annual adjustments for  
12 benefit payments and supplemental payments during fiscal years 1984  
13 and 1985 provided for by **[this 1980 amendatory and supplementary**  
14 **act.] P.L.1980, c.83 (C.34:15-95.4 et al.)**. Such fund shall be  
15 applicable to the payment of valid claims for compensation or death  
16 benefits heretofore or hereafter made pursuant to this chapter or the  
17 federal "Longshore and Harbor Workers' Compensation Act," 44 Stat.  
18 1424 (33 U.S.C. s.901 et seq.), and remaining unpaid, in whole or in  
19 part, by reason of the default, after March 26, 1935, of an insolvent  
20 **[stock]** carrier. Expenses of administration also shall be paid from the  
21 fund as herein provided. Such fund shall consist of all contributions  
22 received and paid into the fund by **[stock]** carriers, as herein defined,  
23 all property and securities acquired by and through the use of moneys  
24 belonging to the fund, and of interest earned upon moneys deposited  
25 or invested as herein provided. The fund shall be administered by the  
26 Commissioner of Banking and Insurance in accordance with the  
27 provisions of this chapter.

28 Compensation pursuant to the federal "Longshore and Harbor  
29 Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.),  
30 shall be payable under this article only with respect to coverage or  
31 risks located or resident in this State. The insolvency, bankruptcy, or  
32 dissolution of the insured shall effect a termination of compensation  
33 provided under this article for claims arising under the federal  
34 "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424  
35 (33 U.S.C. s.901 et seq.).  
36 (cf: P.L.1987, c.250, s.2)

37  
38 3. R.S.34:15-106 is amended to read as follows:

39 34:15-106. Returns by **[stock]** carriers; "net written premiums,"  
40 defined. Every **[stock]** carrier shall, on or before September 1, 1935,  
41 file with the State Treasurer and with the Commissioner of Banking  
42 and Insurance identical returns, under oath, on a form to be prescribed  
43 and furnished by the commissioner, stating the amount of net written  
44 premiums for the six months' period ending June 30, 1935, on policies  
45 issued, renewed or extended by such carrier, to insure payment of  
46 compensation pursuant to this chapter or the federal "Longshore and

1 Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901  
2 et seq.), as authorized by this article. For the purposes of this article  
3 "net written premiums" shall mean gross written premiums less return  
4 premiums on policies returned not taken, and on policies canceled.  
5 Thereafter, on or before the first day of March and September of each  
6 year, each such carrier shall file similar identical returns, stating the  
7 amount of such net written premiums for the six months' period  
8 ending, respectively, on the preceding December 31st and June 30th,  
9 on policies issued, renewed or extended by such carrier.

10 (cf: P.L.1987, c.250, s.3)

11

12 4. R.S.34:15-107 is amended to read as follows:

13 34:15-107. Contributions to **[stock]** the fund. For the privilege of  
14 carrying on the business of **[workmen's]** workers' compensation  
15 insurance in this State, every **[stock]** carrier shall pay into the **[stock]**  
16 fund on the first day of September, nineteen hundred thirty-five, a sum  
17 equal to one per cent of its net written premiums as shown by the  
18 return hereinbefore prescribed for the period ending June thirtieth, one  
19 thousand nine hundred and thirty-five, and thereafter each **[such**  
20 **stock]** carrier, upon filing each semiannual return, shall pay a sum  
21 equal to one percent of its net written premiums for the period covered  
22 by such return.

23 (cf: R.S.34:15-107)

24

25 5. R.S.34:15-108 is amended to read as follows:

26 34:15-108. When the aggregate amount of all such payments into  
27 the **[stock]** fund, together with accumulated interest thereon, less all  
28 its expenditures and known liabilities, becomes equal to 5% of the loss  
29 reserves of all **[stock]** carriers for the payment of benefits under this  
30 chapter or the federal "Longshore and Harbor Workers' Compensation  
31 Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), as authorized by this  
32 article, as of December 31, next preceding, no further contributions to  
33 the fund shall be required to be made. But whenever thereafter, the  
34 amount of the fund shall be reduced below 5% of such loss reserves as  
35 of said date by reason of payments from and known liabilities of the  
36 fund, then contributions to the fund may be resumed forthwith  
37 pursuant to regulations of the Commissioner of Banking and  
38 Insurance, and may continue until the fund, over and above its known  
39 liabilities, shall be equal to not less than 3% nor more than 5% of such  
40 reserves.

41 The Commissioner of Banking and Insurance may by regulation  
42 provide that the amount of the **[stock]** fund may fluctuate between  
43 3% and 5% of loss reserves of all **[stock]** carriers whenever he finds  
44 it to be in the best interest of the fund or advisable for its proper  
45 administration **[;** except that no regulation shall require a stock carrier

1 to make an additional contribution to the stock fund during the 12  
2 month period following the effective date of this amendatory and  
3 supplementary act].

4 (cf: P.L.1987, c.250, s.4)

5

6 6. R.S.34:15-109 is amended to read as follows:

7 34:15-109. Regulations; examination of correctness of returns;  
8 penalties

9 The [commissioner of banking and insurance] Commissioner of  
10 Banking and Insurance may adopt, amend and enforce rules and  
11 regulations necessary for the proper administration of the [stock]  
12 fund. In the event any [stock] carrier shall fail to file any return or  
13 make any payment required by this article, or in case the commissioner  
14 [of banking and insurance] shall have cause to believe that any return  
15 or other statement filed is false or inaccurate in any particular, or that  
16 any payment made is incorrect, he shall have full authority to examine  
17 all the books and records of the carrier for the purpose of ascertaining  
18 the facts and shall determine the correct amount to be paid and may  
19 proceed in any court of competent jurisdiction to recover for the  
20 benefit of the fund any sums shown to be due upon such examination  
21 and determination. Any [stock] carrier which fails to make any  
22 statement as required by [this act] R.S.34:15-103 et seq., or to pay  
23 any contribution to the [stock] fund when due, shall thereby forfeit to  
24 the fund a penalty of five per cent of the amount of unpaid  
25 contribution determined to be due as provided by [this act]  
26 R.S.34:15-103 et seq. plus one per cent of such amount for each  
27 month of delay, or fraction thereof, after the expiration of the first  
28 month of such delay, but the commissioner [of banking and  
29 insurance] may upon good cause shown extend the time for filing of  
30 such return or payment. The commissioner [of banking and  
31 insurance] shall revoke the certificate of authority to do business in  
32 this State of any carrier which shall fail to comply with the provisions  
33 of this article or to pay any penalty imposed in accordance with this  
34 article.

35 (cf: R.S.34:15-109)

36

37 7. R.S.34:15-110 is amended to read as follows:

38 34:15-110. Fund kept separate; investment; Treasurer may sell  
39 securities.

40 The [stock] fund created by [this act] R.S.34:15-105 shall be  
41 separate and apart from any other fund so created and from all other  
42 State moneys. The [state treasurer] State Treasurer shall be the  
43 custodian of such fund; and all disbursements from the fund shall be  
44 made by the [state treasurer] State Treasurer upon vouchers signed  
45 by the [commissioner of banking and insurance] Commissioner of

1 Banking and Insurance as hereinafter provided. The moneys of the  
2 fund may be invested by the [state treasurer] State Treasurer only in  
3 the bonds or securities which are the direct obligations or which are  
4 guaranteed as to principal and interest by the United States or of this  
5 State. The [state treasurer] State Treasurer may sell any of the  
6 securities in which the fund is invested, if advisable for its proper  
7 administration or in the best interests of such fund, and all earnings  
8 from the investments of such fund shall be credited to such fund.  
9 (cf: R.S.34:15-110)

10

11 8. R.S.34:15-111 is amended to read as follows:

12 34:15-111. Payment of claims on application therefor; fund may  
13 recover against insurance carrier but not from employer, except as  
14 otherwise provided. A valid claim for compensation or death benefits,  
15 or installments thereof, heretofore or hereafter made pursuant to this  
16 chapter or the federal "Longshore and Harbor Workers' Compensation  
17 Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), as authorized by this  
18 article, which has remained or shall remain due and unpaid for 60 days,  
19 by reason of default by an insolvent [stock] carrier, shall be paid from  
20 the [stock] fund in the manner provided in this section. Any person  
21 in interest may file with the Commissioner of Banking and Insurance  
22 an application for payment of compensation or death benefits from the  
23 [stock] fund on a form to be prescribed and furnished by the  
24 commissioner. If there has been an award, final or otherwise, a  
25 certified copy thereof shall accompany the application. Such  
26 commissioner shall thereupon certify to the State Treasurer such  
27 award for payment according to the terms of the same, whereupon  
28 payment shall be made by the State Treasurer:

29 [Payment of compensation from the stock fund shall give the fund  
30 no right of recovery against the employer.

31 An] Any person recovering under R.S.34:15-103 et seq. shall be  
32 deemed to have assigned his rights under the policy to the fund to the  
33 extent of his recovery from the fund. Every insured or claimant  
34 seeking the protection of R.S.34:15-103 et seq. shall cooperate with  
35 the fund to the same extent as that person would have been required  
36 to cooperate with the insolvent carrier. The fund shall have no cause  
37 of action against the insured employer or the insolvent carrier for any  
38 sums it has paid out, except those causes of action that the insolvent  
39 carrier would have had if those sums had been paid by the insolvent  
40 carrier, including, but not limited to, the right to receive the benefit of,  
41 and to enforce any and all obligations on the part of the insured, to  
42 either fund directly (or indirectly through a third party administrator),  
43 or secure the payment of, compensation due under the policies of the  
44 insolvent carrier, to the extent of claims paid. The foregoing vests the  
45 fund with an exclusive cause of action against the insured and includes  
46 the right to enforce against the insured the rights of the carrier with

1 respect to any obligation of the insured to reimburse the carrier for  
2 deductibles or pay claims within a deductible. Further, the fund is  
3 vested with a first lien in any collateral provided by the insured to the  
4 carrier to secure the insured's performance, to the extent of claims  
5 paid by the fund, which lien can be perfected by notice to the  
6 liquidator. In the case of an insolvent insurer operating on a plan with  
7 an assessment liability, payments of claims of the fund shall not  
8 operate to reduce the liability of insureds to the receiver, liquidator or  
9 statutory successor for unpaid assessments.

10 The receiver, liquidator, or statutory successor of an insolvent  
11 insurer shall be bound by settlements of covered claims by the fund or  
12 its representatives. The court having jurisdiction shall grant a claim  
13 priority equal to that to which the claimant would have been entitled  
14 in the absence of R.S.34:15-103 et seq. against the assets of the  
15 insolvent carrier. The expenses of the fund or similar organization in  
16 handling claims shall be accorded the same priority as the liquidator's  
17 expenses.

18 Except as otherwise provided in this section, an employer may pay  
19 such award or part thereof in advance of payment from the [stock]  
20 fund and shall thereupon be subrogated to the rights of the employee  
21 or other party in interest against [such] the fund to the extent of the  
22 amount so paid.

23 The State Treasurer as custodian of the [stock] fund shall be  
24 entitled to recover the sum of all liabilities of such insolvent carrier  
25 assumed by such fund from such carrier, its receiver, liquidator,  
26 rehabilitator or trustee in bankruptcy and may prosecute an action or  
27 other proceedings therefor. All moneys recovered in any such action  
28 or proceedings shall forthwith be placed to the credit of the [stock]  
29 fund by the State Treasurer to reimburse the [stock] fund to the  
30 extent of the moneys so recovered and paid.

31 (cf: P.L.1987, c.250, s.5)

32  
33 9. R.S.34:15-117 is amended to read as follows:

34 34:15-117. Insolvency of [stock or mutual] carrier; notice to  
35 [workmen's compensation bureau] Division of Workers'  
36 Compensation; report of conditions.

37 Forthwith upon any carrier becoming [an] insolvent [stock carrier,  
38 or an insolvent mutual carrier, as the case may be], the [commissioner  
39 of banking and insurance] Commissioner of Banking and Insurance  
40 shall so notify the [workmen's compensation bureau] Division of  
41 Workers' Compensation, and the [workmen's compensation bureau]  
42 division shall immediately advise the commissioner [of banking and  
43 insurance]: (a) of all claims for compensation pending or thereafter  
44 made against an employer insured by such insolvent carrier, or against  
45 such insolvent carrier; (b) of all unpaid or continuing agreements,

1 awards or decisions made upon claims prior to or after the date of  
2 such notice from such commissioner; and (c) of all appeals from or  
3 applications for modifications or recision or review of such  
4 agreements, awards or decisions.

5 (cf: R.S.34:15-117)

6

7 10. R.S.34:15-118 is amended to read as follows:

8 34:15-118. Powers and duties of [commissioner of banking and  
9 insurance] Commissioner of Banking and Insurance with respect to  
10 compensation claims.

11 The [commissioner of banking and insurance] Commissioner of  
12 Banking and Insurance or his duly authorized representative may  
13 investigate and may defend before the [workmen's compensation  
14 bureau] Division of Workers' Compensation or any court any or all  
15 claims for compensation against an employer insured by an insolvent  
16 carrier or against such insolvent carrier and may prosecute any  
17 pending appeal or may appeal from or make application for  
18 modification or recision or review of an agreement, award or decision  
19 against such employer or insolvent carrier. Until all such claims for  
20 compensation are closed and all such awards thereon are paid the  
21 commissioner [of banking and insurance], as administrator of the  
22 [funds] fund, shall be a party in interest in respect to all such claims,  
23 agreements and awards. For the purposes of [this act such]  
24 R.S.34:15-103 et seq. the commissioner shall have exclusive power to  
25 select and employ such counsel, clerks and assistants as may be  
26 deemed necessary and to fix and determine their powers and duties;  
27 and he may also, in his discretion, arrange with any carrier or carriers  
28 to investigate and defend any or all such claims and to liquidate and  
29 pay such as are valid and such commissioner may from time to time  
30 reimburse from the [appropriate] fund, such carrier or carriers for  
31 compensation payments so made together with reasonable allowance  
32 for the services so rendered.

33 (cf: R.S.34:15-118)

34

35 11. R.S.34:15-119 is amended to read as follows:

36 34:15-119. Administration expenses; report to legislature.

37 The expense of administering the [stock] fund shall be paid out of  
38 the [stock] fund [and the expense of administering the mutual fund  
39 shall be paid out of the mutual fund]. The [commissioner of banking  
40 and insurance] Commissioner of Banking and Insurance shall serve as  
41 administrator of [each] the fund without additional compensation, but  
42 may be allowed and paid from [either] the fund those expenses  
43 incurred in the performance of his duties in connection with [that] the  
44 fund. The compensation of those persons employed by such  
45 commissioner shall be deemed administration expenses payable from

1 the fund in the manner provided in [paragraph eight of this act]  
2 R.S.34:15-110. Such commissioner shall include in his regular report  
3 to the [legislature] Legislature a statement of the expense of  
4 administering [each of such funds] the fund for the preceding year.  
5 (cf: R.S.34:15-119)

6

7 12. R.S.34:15-120 is amended to read as follows:

8 34:15-120. No deposit of securities required by contributing  
9 carriers.

10 Contributions made by any [stock or mutual] carrier to the [funds]  
11 fund created by [this act] R.S.34:15-105 shall relieve such carriers  
12 from filing any surety bond or making any deposit of securities  
13 required under the provisions of any law of this State for the purpose  
14 of securing the payment of workmen's compensation benefits.  
15 (cf: R.S.34:15-120)

16

17 13. R.S. 34:15-112, 34:15-113, 34:15-114, 34:15-115 and 34:15-  
18 116 are repealed.

19

20 14. This act shall take effect immediately.

21

22

#### 23 STATEMENT

24

25 This bill revises and modernizes the workers' compensation  
26 insurance security fund system.

27 The bill merges the existing stock and mutual workers'  
28 compensation insurance security funds into one common fund. There  
29 is no longer any policy reason to maintain separate funds. Many  
30 mutuals have either demutualized or formed mutual holding companies  
31 with stock operating companies and there are fewer mutual carriers  
32 over which to spread an assessment, if necessary. In addition, the  
33 change will simplify the assessment process and the financial  
34 operations of the fund for the Department of Banking and Insurance  
35 and the State Treasurer.

36 The bill clarifies that the security required by the rules of the  
37 Compensation Rating and Inspection Bureau for those employers  
38 utilizing a large risk-large deductible workers compensation program,  
39 can be attached by the fund in the event of insolvency. The security  
40 is intended to make certain that funds are available to pay claims  
41 within the deductible. This becomes important when a carrier, which  
42 under New Jersey's large deductible program has first dollar  
43 responsibility to pay claims, becomes insolvent, and the security fund  
44 has to pay the claims within the deductible. If the employer does not  
45 reimburse the fund for those claims payments, the fund assumes the  
46 right of the insolvent insurer to recover those payments against the

1 security established by the employer for this purpose. This revision to  
2 the law will clarify and protect the fund's right to recover to the extent  
3 that the security fund has paid such claims.

4 The bill adds reciprocals to the definition of "carrier," under the  
5 law. Reciprocals are a recognized form of insurance company and  
6 such policyholders should be covered by the fund. The bill also  
7 clarifies that the security fund is responsible to pay only claims arising  
8 under primary workers compensation policies.



# ASSEMBLY LABOR COMMITTEE

## STATEMENT TO

### ASSEMBLY, No. 2871

# STATE OF NEW JERSEY

DATED: JUNE 3, 2004

The Assembly Labor Committee reports favorably Assembly Bill No. 2871.

This bill revises and modernizes the workers' compensation insurance security fund system.

The bill merges the existing stock and mutual workers' compensation insurance security funds into one common fund. There is no longer any policy reason to maintain separate funds. Many mutuals have either demutualized or formed mutual holding companies with stock operating companies and there are fewer mutual carriers over which to spread an assessment, if necessary. In addition, the change will simplify the assessment process and the financial operations of the fund for the Department of Banking and Insurance and the State Treasurer.

The bill clarifies that the security required by the rules of the Compensation Rating and Inspection Bureau for those employers utilizing a large risk-large deductible workers compensation program, can be attached by the fund in the event of insolvency. The security is intended to make certain that funds are available to pay claims within the deductible. This becomes important when a carrier, which under New Jersey's large deductible program has first dollar responsibility to pay claims, becomes insolvent, and the security fund has to pay the claims within the deductible. If the employer does not reimburse the fund for those claims payments, the fund assumes the right of the insolvent insurer to recover those payments against the security established by the employer for this purpose. This revision to the law will clarify and protect the fund's right to recover to the extent that the security fund has paid such claims.

The bill adds reciprocals to the definition of "carrier," under the law. Reciprocals are a recognized form of insurance company and such policyholders should be covered by the fund. The bill also clarifies that the security fund is responsible to pay only claims arising under primary workers compensation policies.