

ASSEMBLY, No. 1755

STATE OF NEW JERSEY

INTRODUCED MARCH 25, 1996

By Assemblyman DALTON

1 AN ACT concerning workers' compensation special adjustment and
2 supplemental benefit payments and amending R.S.34:15-94 and
3 P.L.1980, c.83.

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

7
8 1. R.S.34:15-94 is amended to read as follows:

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

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

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

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

Matter underlined thus is new matter.

1 b. Commencing January 1, 1989 and on the first day of each year
2 thereafter, the Commissioner of Labor shall levy an annual surcharge
3 upon all policyholders and self-insured employers for the purpose of
4 providing moneys to the Second Injury Fund. Each policyholder and
5 self-insured employer shall be liable for payment of the annual
6 surcharge in accordance with the provisions of this section and all
7 regulations promulgated pursuant hereto. The annual surcharge levied
8 under this section shall be applied to all workers' compensation and
9 employer's liability insurance policies providing coverage on or after
10 January 1, 1989 and, in the case of self-insured employers, to coverage
11 provided on or after January 1, 1989. Notwithstanding any law to the
12 contrary, the surcharge levied pursuant to this section shall not apply:
13 to any reinsurance or retrocessional transaction; to the State or any
14 political subdivision thereof which acts as a self-insured employer; or
15 to any workers' compensation endorsement required pursuant to
16 section 1 of P.L.1979, c.380 (C.17:36-5.29).

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

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

23 (2) Each insurer shall submit to the Commissioner of Insurance, in
24 a form and manner prescribed by the Commissioner of Insurance, a
25 report of the total earned premiums collected by the insurer on all
26 workers' compensation or employer's liability policies written on risks
27 located in this State pursuant to the provisions of R.S.17:17-1 et seq.,
28 during the 12-month period ending on the immediately preceding June
29 30th;

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

35 (4) The Commissioner of Labor shall establish the aggregate annual
36 surcharge to be levied upon policyholders and self-insured employers
37 during the next following calendar year, which shall be an amount
38 equal to 150% of the moneys estimated by the Commissioner of Labor
39 to be payable from the Second Injury Fund during the next following
40 calendar year, less the estimated amount of net assets exceeding
41 \$5,000,000.00 which will remain in the Second Injury Fund on
42 December 31st of the then current calendar year and less the estimated
43 amount of moneys to be collected from non-insured governmental
44 entities pursuant to paragraph (3) of subsection e. of this section;

45 (5) The Commissioner of Labor shall apportion the aggregate
46 annual surcharge calculated pursuant to paragraph (4) of this

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

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

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

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

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

1 and supplemental benefits shall be applicable only through the fiscal
2 year 1997.

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

27 (2) On or before the 30th day after the end of each calendar
28 quarter commencing January 1, 1989, and on or before the 30th day
29 following the end of each calendar quarter thereafter, each self-insured
30 employer shall remit to the Commissioner of Labor an amount equal
31 to one-fourth of the effective net annual surcharge as established for
32 that self-insured employer during the then current calendar year
33 pursuant to subsection d. of this section, less special adjustment and
34 supplemental benefits paid during the preceding calendar quarter by
35 the self-insured employer pursuant to the workers' compensation law,
36 R.S.34:15-1 et seq. This reduction of the annual surcharge for
37 payments of special adjustment and supplemental benefits shall be
38 applicable only through the fiscal year 1997.

39 (3) On or before the 60th day following the end of each fiscal year,
40 each non-insured governmental entity of the State of New Jersey shall
41 remit to the Commissioner of Labor an amount equal to the benefits
42 paid from the Second Injury Fund during the immediately preceding
43 fiscal year to employees and dependents whose compensable injury or
44 death occurred during or as a result of employment with that
45 non-insured governmental entity.

46 f. The Commissioner of Labor shall promulgate within 180 days of

1 the effective date of this act and in accordance with the
2 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
3 seq.), any rules and regulations as may be necessary for the
4 apportionment and collection of annual surcharges from policyholders
5 and self-insured employers covered by this section.

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

13 h. For each 30-day period or part thereof during which a
14 policyholder, self-insured employer, or insurer fails to make a payment
15 or transfer of payment as required by this section or regulations
16 promulgated pursuant hereto, a penalty of one-half of one percent
17 (0.5%) of the amount of delinquent payment or transfer of payment
18 shall be assessed against the delinquent policyholder, self-insured
19 employer or insurer. In no case of single failure, however, shall
20 penalties assessed under this section exceed five percent (5.0%) of the
21 amount of surcharge unpaid or untransferred. Penalties assessed under
22 this subsection shall be collected in a civil action by a summary
23 proceeding brought by the Commissioner of Labor pursuant to "the
24 penalty enforcement law," N.J.S.2A:58-1 et seq., and shall be
25 deposited by the commissioner in the Second Injury Fund.

26 i. For each 30-day period during which an insurer or self-insured
27 employer fails to file a report as required by this section, the
28 Commissioner of Labor shall assess a penalty of \$100.00 against the
29 insurer or self-insured employer and, upon collection thereof, shall
30 deposit those monies in the "uninsured employer's fund." As a result
31 of any single failure, however, no such penalty shall exceed a total of
32 \$500.00. During the period of any such failure to file this report, the
33 estimate by the Department of Labor of the amounts of such
34 compensation payments or earned premiums shall be used for the
35 purposes cited in the workers' compensation law, R.S.34:15-1 et seq.

36 j. The Commissioner of Labor may, with the authorization of and
37 appropriation by the Legislature, transfer from the Second Injury Fund
38 an amount necessary for the cost of administration of the Division of
39 Workers' Compensation in the Department of Labor.

40 k. As used in this section, "policyholder" means a holder of a
41 policy of workers' compensation or employer's liability insurance
42 issued by an insurer. "Insurer" means a domestic, foreign or alien
43 mutual association or stock company writing workers' compensation
44 or employer's liability insurance on risks located in this State and
45 subject to premium taxes pursuant to P.L.1945, c.132 (C.54:18A-1 et
46 seq.). "Self-insured employer" means an employer which self-insures

1 for workers' compensation or employer's liability insurance pursuant
2 to the provisions of R.S.34:15-77.

3 (cf: P.L.1990, c.46, s.1)
4

5 2. Section 1 of P.L.1980, c.83 (C.34:15-95.4) is amended to read
6 as follows:

7 1. a. Any employee or dependent receiving weekly benefits as
8 provided under R.S.34:15-95, R.S.34:15-12(b) or R.S.34:15-13 at a
9 rate applicable prior to January 1, 1980, and whose payment is less
10 than the maximum compensation rate in effect for the year 1980, shall
11 be entitled to receive a special adjustment benefit payment from the
12 Second Injury Fund and from those sources as provided for by [this
13 1980 amendatory and supplementary act] P.L.1980, c.83
14 (C.34:15-95.4 et al.).

15 Any dependent, as defined in R.S.34:15-13, of a person totally
16 disabled who dies while receiving compensation from the Second
17 Injury Fund, shall become entitled to dependent benefits under this
18 chapter which are comparable to payments made to other dependents
19 under the workers' compensation law, R.S.34:15-1 et seq., on or after
20 [the effective date of this 1980 amendatory and supplementary act]
21 July 1, 1980.

22 All compensation payments made under this chapter to a dependent,
23 as defined under R.S.34:15-13, of an individual who dies while
24 receiving such compensation, shall be payable only where the
25 compensable occupational injury or disease of the decedent is a
26 material contributing factor to his death.

27 The payment of these adjustment benefits shall be paid to an
28 employee or dependent as long as the employee or dependent is
29 eligible to receive payments under R.S.34:15-95, R.S.34:15-12(b),
30 R.S.34:15-13, or this section.

31 The amount of the special adjustment benefit payment shall be such
32 that when added to the workers' compensation rate awarded pursuant
33 to R.S.34:15-95, R.S.34:15-12(b), R.S.34:15-13 or this section as a
34 result of injury or death, the total shall bear the same percentage
35 relationship to the 1980 maximum workers' compensation rate that the
36 worker's own compensation rate awarded as a result of the injury or
37 death bears to the then effective maximum workers' compensation
38 rate. The amount of the special adjustment benefit shall be payable at
39 a rate of 35% of the adjustment during the fiscal year 1981
40 commencing July 1, 1980; 75% of the adjustment during the fiscal year
41 1982; and 100% of the adjustment during the fiscal year 1983 and
42 thereafter through fiscal year 1997. The special adjustment benefit
43 payment provided herein shall be reduced by an amount equal to the
44 individual's benefit payable under the Federal Old-Age, Survivors' and
45 Disability Insurance Act (not including increases in such benefits due
46 to any federal statutory increases after May 31, 1980), Black Lung

1 benefits, or the employer's share of disability pension payments
2 received from or on account of an employer. Where any person
3 refuses to authorize the release of information concerning the amount
4 of benefits payable under the aforementioned benefits, the division's
5 estimate of that amount shall be deemed to be correct unless and until
6 the actual amount is established and no adjustment shall be made for
7 any period of time covered by any such refusal.

8 Payments of the adjustment shall be made from the Second Injury
9 Fund in the manner hereinafter provided. The Commissioner of Labor
10 shall make payments from the Second Injury Fund directly to the
11 persons who are now receiving benefits under R.S. 34:15-95 and to
12 their dependents becoming eligible for dependents' benefits under [this
13 1980 amendatory and supplementary act] P.L.1980, c.83
14 (C.34:15-95.4 et al.) by increasing or, as the case may be, setting the
15 biweekly compensation payments to include the biweekly special
16 adjustment. In the case of persons who are entitled to compensation
17 under R.S.34:15-12(b) or R.S.34:15-13, the insurance carrier or
18 self-insured employer in the second and subsequent fiscal years after
19 enactment shall increase the weekly compensation payments to include
20 the weekly special adjustment. For such special adjustment payments
21 and supplements to special adjustment payments paid during the period
22 July 1, 1981 and December 31, 1988, insurance carriers and
23 self-insured employers shall credit the payments against the
24 assessments payable by the insurance carrier or self-insurer under
25 R.S.34:15-94. The insurance carrier or self-insurer claiming such
26 credit shall submit vouchers upon forms prescribed by the
27 Commissioner of Labor, identifying each case and indicating the
28 weekly benefit adjustment applicable thereto on or before June 30,
29 1989.

30 Beginning in the fiscal year 1984 and in every fiscal year thereafter
31 through fiscal year 1997, a supplement to the special adjustment
32 benefit payment shall be paid to all employees or dependents entitled
33 to the special adjustment benefit payment. The supplement to the
34 special adjustment benefit payment shall be paid in an amount, in
35 combination with income from all sources referred to in this section,
36 which bears the same percentage relationship to the then current
37 maximum workers' compensation rate that the worker's own
38 compensation rate awarded as a result of the injury or death bears to
39 the then effective maximum workers' compensation rate. Beginning
40 in fiscal year 1986 and in every fiscal year thereafter, payment of
41 supplements to the special adjustment benefits shall be made from the
42 Second Injury Fund. Payment of supplements to the special adjustment
43 benefits for fiscal years 1984 and 1985 shall be from interest earned
44 and accrued upon moneys belonging to "the stock workers'
45 compensation security fund" and "the mutual workers' compensation
46 security fund" during fiscal years 1981 through 1985, and from special

1 assessments upon self-insured employers in the same proportions as
2 provided under R.S.34:15-94.

3 b. Beginning with the fiscal year 1998, commencing July 1, 1997,
4 and during each fiscal year thereafter, any employee or dependent who
5 receives weekly benefits as provided under R.S.34:15-95,
6 R.S.34:15-12(b), or R.S.34:15-13, and whose weekly benefit payment
7 is less than the maximum compensation rate in effect on the date of the
8 benefit payment, shall be entitled to supplemental benefits from the
9 Second Injury Fund. The payment of these supplemental benefits shall
10 be made to a beneficiary as long as the beneficiary is eligible to receive
11 payments under R.S.34:15-95, R.S.34:15-12(b), R.S.34:15-13, or this
12 section.

13 The amount of the supplemental benefits shall be determined during
14 the fiscal year 1998 and recalculated during every fiscal year following
15 that fiscal year. For the year that the amount of the supplemental
16 benefits is determined or recalculated, the base amount of the
17 supplemental benefits shall be such that when that base amount is
18 added to the workers' compensation rate awarded pursuant to
19 R.S.34:15-95, of R.S.34:15-12(b), R.S.34:15-13 or this section, as a
20 result of the injury or death, the total of both the compensation rate
21 and the base amount of the supplemental benefits shall bear the same
22 percentage relationship to the then current maximum workers'
23 compensation rate that the worker's own compensation rate awarded
24 as the result of the injury or death bears to the maximum workers'
25 compensation rate in effect at the time of the injury or death. The
26 actual amount of the supplemental benefits to be paid to a beneficiary
27 shall be the base amount of the supplemental benefits determined or
28 recalculated pursuant to this subsection reduced by an amount equal
29 to the benefits payable during the year of the determination or
30 recalculation to the beneficiary under the federal Old-Age, Survivors
31 and Disability Insurance Act, Black Lung benefits, or the employer's
32 share of disability pension payments received from or on account of an
33 employer. For beneficiaries to whom special adjustment benefit
34 payments or supplemental benefit payments, or both, were paid
35 pursuant to this section during fiscal year 1997 however, the
36 supplemental benefit payment under this subsection shall not be less
37 than the total of such special adjustment, supplemental benefits, or
38 both, paid during that fiscal year, except to the extent that the
39 supplemental benefit payment is reduced as a result of increases in
40 Black Lung benefits or the employer's share of disability pension
41 payments received from or on account of an employer. For persons
42 under the age of 62 receiving benefits as provided under R.S.34:15-95
43 or R.S.34:15-12(b), and whose period of disability began after
44 December 31, 1979, the amount of reduction to the supplemental
45 benefit payments provided pursuant to this section for benefits payable
46 from the federal Old-Age Survivors and Disability Insurance Act shall

1 be equal to the amount of such benefits payable less any portion
2 thereof used to reduce the compensation amount payable pursuant to
3 section 9 of P.L.1980, c.83 (C.34:15-95.5)
4 (cf: P.L.1988, c.26, s.3)
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6 3. This act shall take effect immediately.
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9 STATEMENT
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11 This bill amends the workers' compensation law, R.S.34:15-1 et
12 seq., to provide that:

13 1. Supplemental benefits which are currently provided only to
14 workers permanently and totally disabled prior to 1980 and their
15 dependents be extended to workers permanently and totally disabled
16 after 1980 and their dependents. The amount of the supplemental
17 benefit payment for a beneficiary is to equal an amount that, when
18 added to the basic compensation rate awarded pursuant to
19 R.S.34:15-95, R.S.34:15-12(b), or R.S.34:15-13, bears the same
20 percentage relationship to the then current maximum workers'
21 compensation rate that the beneficiary's own compensation rate
22 awarded as the result of the injury or death bears to the maximum
23 workers' compensation rate at the time of the injury or death.

24 2. The full amount of Social Security benefits and other
25 disability-related income received by a beneficiary be used to offset the
26 supplemental benefits indicated in paragraph 1 above. The bill makes
27 this offset apply not only to post-1979 beneficiaries, but also to
28 pre-1980 beneficiaries. The current law, in the case of the pre-1980
29 beneficiaries, offsets against supplemental workers' compensation
30 benefits only the portion of Social Security benefits which represents
31 a beneficiary's benefit level in 1980 and exempts any increases in
32 Social Security benefits after 1980 from being offset against
33 supplemental workers' compensation benefits.

34 3. The supplemental benefits for pre-1980 beneficiaries are not to
35 be reduced in connection with the elimination of the exemption of
36 certain Social Security benefits from the offset as provided in
37 paragraph 2 above. This would prevent an absolute reduction in the
38 amount of benefits provided to those beneficiaries which would
39 otherwise occur as a result of the elimination of that exemption.

40 4. The amount of Social Security benefit offset used for disabled
41 workers under the age of 62, whose disability commenced after
42 December 31, 1979, be limited to the amount of the Social Security
43 income already used in order to prevent the use of the same Social
44 Security income twice in the calculation of the basic award.

45 5. Benefit levels be adjusted annually.

46 6. Each non-insured public employer be charged for the Second

1 Injury Fund benefits paid on claims arising from employment with that
2 employer.

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7 Extends supplemental workers' compensation benefits to injuries and
8 deaths occurring after January 1, 1980.