

SENATE, No. 864

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 26, 1996

By Senator CARDINALE

1 AN ACT concerning the appeal of certain decisions, determinations or  
2 orders of the Department of Insurance.

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

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7 1. Upon the finding of willful misconduct on the part of a  
8 respondent, a petitioner who appeals a decision, determination or  
9 order of the Department of Insurance or the commissioner thereof,  
10 which affects the legal rights, duties, obligations, privileges, benefits  
11 or other legal relations of that petitioner, and prevails in that appeal in  
12 an administrative proceeding, shall be awarded attorneys' fees, expert  
13 witness fees, investigatory costs and other costs related to the  
14 administrative proceeding. Notwithstanding the provisions of  
15 N.J.S.59:1-1 et seq. or any other law to the contrary, the Department  
16 of Insurance shall pay for 90 percent of these fees and costs and the  
17 employee of the Department of Insurance who rendered the decision  
18 or determination or issued the order which affects the legal rights,  
19 duties, obligations, privileges, benefits or other legal relations of the  
20 petitioner shall pay for 10 percent of these fees and costs, except that  
21 the employee's 10% share of these fees and costs shall be waived if the  
22 employee resigns from employment with the State of New Jersey and  
23 is not employed by the State of New Jersey for a period of five years  
24 thereafter.

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26 2. Upon the finding of willful misconduct on the part of the  
27 defendant, a plaintiff who appeals a decision, determination or order  
28 of the Department of Insurance or the commissioner thereof, which  
29 affects the legal rights, duties, obligations, privileges, benefits or other  
30 legal relations of the plaintiff, and prevails in that appeal in a court of  
31 competent jurisdiction, shall be awarded triple damages, attorneys'  
32 fees, expert witness fees, investigatory costs and court costs.  
33 Notwithstanding the provisions of N.J.S.59:1-1 et seq. or any other  
34 law to the contrary, the Department of Insurance shall pay for 90  
35 percent of these damages, fees and costs and the employee of the  
36 Department of Insurance who rendered the decision or determination  
37 or issued the order which affects the legal rights, duties, obligations,

1 privileges, benefits or other legal relations of the plaintiff shall pay for  
2 10 percent of these damages, fees and costs, except that the  
3 employee's 10% share of these damages, fees and costs shall be waived  
4 if the employee resigns from employment with the State of New Jersey  
5 and is not employed by the State of New Jersey for a period of five  
6 years thereafter.

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8 3. This act shall take effect immediately.

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11 STATEMENT  
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13 This bill allows persons, who are wronged by decisions,  
14 determinations or orders of the Department of Insurance involving  
15 willful misconduct on the part of the department, to collect attorneys'  
16 fees, expert witness fees, investigatory costs and other costs if they  
17 prevail in an administrative proceeding appealing the decision,  
18 determination or order. The bill also allows parties to collect triple  
19 damages, attorneys' fees, expert witness fees, investigatory costs and  
20 court costs if they prevail in a court suit appealing the decision,  
21 determination or order involving willful misconduct on the part of the  
22 department. The Department of Insurance must pay 90% of the  
23 awarded amounts and the employee who rendered the decision,  
24 determination or order must pay the remaining 10%, except that the  
25 employee's 10% share of these awarded amounts shall be waived if the  
26 employee resigns from employment with the State of New Jersey, and  
27 is not employed by the State of New Jersey for a period of five years  
28 thereafter.

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33 Requires reimbursement for certain costs if petitioners or plaintiffs  
34 prevail in certain Department of Insurance decisions.