

## CHAPTER 5

**AN ACT** concerning the calculation of certain surcharges imposed pursuant to Title 34 of the Revised Statutes and amending R.S.34:15-94.

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

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

Annual surcharge for Second Injury Fund.

34:15-94. a. (Deleted by amendment, P.L.1999, c.408).

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

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

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

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

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

(4) The Commissioner of Labor shall make a determination of the aggregate annual surcharge to be levied upon policyholders and self-insured employers during the next following calendar year, which shall be an amount equal to (a) 150%, in the case of any calendar year commencing prior to January 1, 2000, and (b) 125%, in the case of any calendar year commencing after December 31, 1999, of the compensation and benefits estimated by the Commissioner of Labor to be payable from the Second Injury Fund during the next following calendar year plus 100% of the amount estimated by the Commissioner of Labor to be necessary for the cost of administration of the Division of Workers' Compensation in the Department of Labor, less the estimated amount of net assets exceeding \$5,000,000.00 which will remain in the Second Injury Fund on December 31st of the then current calendar year, and the Commissioner of Labor shall submit an informational copy to the Joint Budget Oversight Committee. For the purpose of determining the annual surcharge to be levied upon policyholders and self-insured employers as prescribed herein, any amount transferred from the Second Injury Fund to the General Fund pursuant to P.L. , c. (C. )(pending before the Legislature as Senate Bill No. 18 of 2002) shall be added back to the Second Injury Fund for computational purposes only;

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

shall be liable to pay that portion of the aggregate annual surcharge that is equal to the proportion that the compensation payments made by all self-insured employers during the 12-month period ending on the immediately preceding June 30th bear to the total compensation payments made by all policyholders and self-insured employers during the 12-month period ending on the immediately preceding June 30th; and

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

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

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

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

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

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

f. The Commissioner of Labor shall promulgate within 180 days of the effective date of this act and in accordance with the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), any rules and regulations as may be necessary for the apportionment and collection of

annual surcharges from policyholders and self-insured employers covered by this section.

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

h. For each 30-day period or part thereof during which a policyholder, self-insured employer, or insurer fails to make a payment or transfer of payment as required by this section or regulations promulgated pursuant hereto, a penalty of one-half of one percent (0.5%) of the amount of delinquent payment or transfer of payment shall be assessed against the delinquent policyholder, self-insured employer or insurer. In no case of single failure, however, shall penalties assessed under this section exceed five percent (5.0%) of the amount of surcharge unpaid or untransferred. Penalties assessed under this subsection shall be collected in a civil action by a summary proceeding brought by the Commissioner of Labor pursuant to "The Penalty Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.), and shall be deposited by the commissioner in the Second Injury Fund.

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

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

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

2. This act shall take effect immediately.

Approved March 18, 2002.