

## CHAPTER 179

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

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

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

### Definitions.

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

"Fund" means the workers' compensation security fund created by R.S.34:15-105.

"Fund year" means the calendar year.

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

"Insolvent carrier" means a carrier which has been determined to be insolvent, or for which or for the assets of which a receiver has been appointed by a court or public officer of competent jurisdiction and authority.

"Covered claims" means "compensation," "benefits," "death benefits," and "payments of losses" with respect to the injury or death of workers under this chapter, R.S. 34:15-1 et seq., or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.), arising from coverage of risks located or resident in this State

"Compensation rate" means the rate of compensation provided by the workers' compensation act, R.S.34:15-1 et seq.

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

### Workers' compensation security fund.

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

Compensation pursuant to the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), shall be payable under this article only with respect to coverage or risks located or resident in this State. The insolvency, bankruptcy, or dissolution of the insured shall effect a termination of compensation provided under this article for claims arising under the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s.901 et seq.).

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

### Returns by carriers; "net written premiums," defined.

34:15-106. Every carrier shall, on or before September 1, 1935, file with the State Treasurer and with the Commissioner of Banking and Insurance identical returns, under oath, on a form to be prescribed and furnished by the commissioner, stating the amount of net written premiums for the six months' period ending June 30, 1935, on policies issued, renewed or extended by such

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

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

Contributions to the fund.

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

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

Contributions, when ceased; resumption of contributions.

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

The Commissioner of Banking and Insurance may by regulation provide that the amount of the fund may fluctuate between 3% and 5% of loss reserves of all carriers whenever he finds it to be in the best interest of the fund or advisable for its proper administration.

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

Regulations; examination of correctness of returns; penalties.

34:15-109. The Commissioner of Banking and Insurance may adopt, amend and enforce rules and regulations necessary for the proper administration of the fund. In the event any carrier shall fail to file any return or make any payment required by this article, or in case the commissioner shall have cause to believe that any return or other statement filed is false or inaccurate in any particular, or that any payment made is incorrect, he shall have full authority to examine all the books and records of the carrier for the purpose of ascertaining the facts and shall determine the correct amount to be paid and may proceed in any court of competent jurisdiction to recover for the benefit of the fund any sums shown to be due upon such examination and determination. Any carrier which fails to make any statement as required by R.S.34:15-103 et seq., or to pay any contribution to the fund when due, shall thereby forfeit to the fund a penalty of five per cent of the amount of unpaid contribution determined to be due as provided by R.S.34:15-103 et seq. plus one per cent of such amount for each month of delay, or fraction thereof, after the expiration of the first month of such delay, but the commissioner may upon good cause shown extend the time for filing of such return or payment. The commissioner shall revoke the

certificate of authority to do business in this State of any carrier which shall fail to comply with the provisions of this article or to pay any penalty imposed in accordance with this article.

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

Fund kept separate; investment; treasurer may sell securities.

34:15-110. The fund created by R.S.34:15-105 shall be separate and apart from any other fund so created and from all other State moneys. The State Treasurer shall be the custodian of such fund; and all disbursements from the fund shall be made by the State Treasurer upon vouchers signed by the Commissioner of Banking and Insurance as hereinafter provided. The moneys of the fund may be invested by the State Treasurer only in the bonds or securities which are the direct obligations or which are guaranteed as to principal and interest by the United States or of this State. The State Treasurer may sell any of the securities in which the fund is invested, if advisable for its proper administration or in the best interests of such fund, and all earnings from the investments of such fund shall be credited to such fund.

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

Payment of claims on application therefor; fund may recover against insurance carrier but not from employer, except as otherwise provided.

34:15-111. A valid claim for compensation or death benefits, or installments thereof, heretofore or hereafter made pursuant to this chapter or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. s. 901 et seq.), as authorized by this article, which has remained or shall remain due and unpaid for 60 days, by reason of default by an insolvent carrier, shall be paid from the fund in the manner provided in this section. Any person in interest may file with the Commissioner of Banking and Insurance an application for payment of compensation or death benefits from the fund on a form to be prescribed and furnished by the commissioner. If there has been an award, final or otherwise, a certified copy thereof shall accompany the application. Such commissioner shall thereupon certify to the State Treasurer such award for payment according to the terms of the same, whereupon payment shall be made by the State Treasurer:

Any person recovering under R.S.34:15-103 et seq. shall be deemed to have assigned his rights under the policy to the fund to the extent of his recovery from the fund. Every insured or claimant seeking the protection of R.S.34:15-103 et seq. shall cooperate with the fund to the same extent as that person would have been required to cooperate with the insolvent carrier. The fund shall have no cause of action against the insured employer or the insolvent carrier for any sums it has paid out, except those causes of action that the insolvent carrier would have had if those sums had been paid by the insolvent carrier, including, but not limited to, the right to receive the benefit of, and to enforce any and all obligations on the part of the insured, to either fund directly (or indirectly through a third party administrator), or secure the payment of, compensation due under the policies of the insolvent carrier, to the extent of claims paid. The foregoing vests the fund with an exclusive cause of action against the insured and includes the right to enforce against the insured the rights of the carrier with respect to any obligation of the insured to reimburse the carrier for deductibles or pay claims within a deductible. Further, the fund is vested with a first lien in any collateral provided by the insured to the carrier to secure the insured's performance, to the extent of claims paid by the fund, which lien can be perfected by notice to the liquidator. In the case of an insolvent insurer operating on a plan with an assessment liability, payments of claims of the fund shall not operate to reduce the liability of insureds to the receiver, liquidator or statutory successor for unpaid assessments.

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

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

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

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

Insolvency of carrier; notice to Division of Workers' Compensation; report of conditions.

34:15-117. Forthwith upon any carrier becoming insolvent, the Commissioner of Banking and Insurance shall so notify the Division of Workers' Compensation, and the division shall immediately advise the commissioner: (a) of all claims for compensation pending or thereafter made against an employer insured by such insolvent carrier, or against such insolvent carrier; (b) of all unpaid or continuing agreements, awards or decisions made upon claims prior to or after the date of such notice from such commissioner; and (c) of all appeals from or applications for modifications or rescission or review of such agreements, awards or decisions.

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

Powers and duties of Commissioner of Banking and Insurance with respect to compensation claims.

34:15-118. The Commissioner of Banking and Insurance or his duly authorized representative may investigate and may defend before the Division of Workers' Compensation or any court any or all claims for compensation against an employer insured by an insolvent carrier or against such insolvent carrier and may prosecute any pending appeal or may appeal from or make application for modification or rescission or review of an agreement, award or decision against such employer or insolvent carrier. Until all such claims for compensation are closed and all such awards thereon are paid the commissioner, as administrator of the fund, shall be a party in interest in respect to all such claims, agreements and awards. For the purposes of R.S.34:15-103 et seq. the commissioner shall have exclusive power to select and employ such counsel, clerks and assistants as may be deemed necessary and to fix and determine their powers and duties; and he may also, in his discretion, arrange with any carrier or carriers to investigate and defend any or all such claims and to liquidate and pay such as are valid and such commissioner may from time to time reimburse from the fund, such carrier or carriers for compensation payments so made together with reasonable allowance for the services so rendered.

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

Administration expenses; report to Legislature.

34:15-119. The expense of administering the fund shall be paid out of the fund. The Commissioner of Banking and Insurance shall serve as administrator of the fund without additional compensation, but may be allowed and paid from the fund those expenses incurred in the performance of his duties in connection with the fund. The compensation of those persons employed by such commissioner shall be deemed administration expenses payable from the fund in the manner provided in R.S.34:15-110. Such commissioner shall include in his regular report to the Legislature a statement of the expense of administering the fund for the preceding year.

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

No deposit of securities required by contributing carriers.

34:15-120. Contributions made by any carrier to the fund created by R.S.34:15-105 shall relieve such carriers from filing any surety bond or making any deposit of securities required under the provisions of any law of this State for the purpose of securing the payment of workmen's compensation benefits.

Repealer.

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

14. This act shall take effect immediately.

Approved December 22, 2004.