

CHAPTER 94

AN ACT concerning workers' compensation insurance and amending R.S.34:15-79 and P.L.1995, c.393.

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

1. R.S.34:15-79 is amended to read as follows:

Penalties for failure to carry insurance.

34:15-79. An employer who fails to provide the protection prescribed in this article shall be guilty of a disorderly persons offense and shall be guilty of a crime of the fourth degree if such failure is knowing. In cases where a workers' compensation award in the Division of Workers' Compensation of New Jersey against the defendant is not paid at the time of the sentence, the court may suspend sentence upon that defendant and place him on probation for any period with an order to pay the delinquent compensation award to the claimant through the probation office of the county. Where the employer is a corporation, any officer who is actively engaged in the corporate business, including, but not limited to, the president, vice-president, secretary, and the treasurer thereof shall be liable for failure to secure the protection prescribed by this article. Any contractor placing work with a subcontractor shall, in the event of the subcontractor's failing to carry workers' compensation insurance as required by this article, become liable for any compensation which may be due an employee or the dependents of a deceased employee of a subcontractor. The contractor shall then have a right of action against the subcontractor for reimbursement.

A rebuttable presumption that an employer has established a successor firm, corporation or partnership shall arise if the two share at least three of the following capacities or characteristics: (1) perform similar work; (2) occupy the same premises; (3) have the same telephone or fax number; (4) have the same email address or internet website; (5) perform work in the same geographical area; (6) employ substantially the same work force; (7) utilize the same tools and equipment; (8) employ or engage the services of any person or persons involved in the direction or control of the other; or (9) list substantially the same work experience. If it is determined that an employer has established a successor firm, corporation or partnership, the "uninsured employer's fund" shall have a subrogation right against the successor firm, corporation or partnership for any benefits paid pursuant to R.S.34:15-1 et seq. by the "uninsured employer's fund," the injured worker may seek benefits not otherwise paid or payable by the "uninsured employer's fund" from the successor firm, corporation or partnership, and the successor firm, corporation or partnership shall have all of the same responsibilities regarding workers' compensation required pursuant to R.S.34:15-1 et seq. as the original employer.

Failure to produce at the time of the trial or upon written request by the division proof of workers' compensation insurance coverage by a mutual association or stock company authorized to write coverage on such risks in this State or written authorization by the Commissioner of Banking and Insurance to self-insure for workers' compensation pursuant to R.S.34:15-77, which was in force for the time cited by the division, creates a rebuttable presumption that the employer was uninsured when charged with a violation of this section.

The Director of the Division of Workers' Compensation, or any officer or employee of the division designated by the director, upon finding that an employer has failed for a period of not less than 10 consecutive days to make the provisions for payment of compensation required by R.S.34:15-71 and R.S.34:15-72, shall impose upon that employer, in addition to all other penalties, fines or assessments provided for in chapter 15 of Title 34 of the Revised

Statutes or in any supplement thereto, a penalty in the amount of up to \$5,000 and when the period exceeds 10 days, an additional penalty of up to \$5,000 for each period of 10 days thereafter. All penalties under this act shall be enforced and collected in accordance with section 12 of P.L.1966, c.126 (C.34:15-120.3). All penalties collected under this section shall be paid into the "uninsured employer's fund."

2. Section 2 of P.L.1995, c.393 (C.34:15-89.1) is amended to read as follows:

C.34:15-89.1 Notification to mutual associations, stock companies of requirements of employer ID numbers.

2. a. On or before March 1, 1996 and thereafter, the Compensation Rating and Inspection Bureau shall notify all mutual associations and stock companies authorized to write workers' compensation or employer's liability insurance on risks located in this State of the requirements of subsections b. and c. of this section.

b. On and after July 1, 1996, all mutual associations and stock companies authorized to write workers' compensation or employer's liability policies on risks located in this State shall, upon application for new policies or renewal of any existing policies, require submission of the employer identification number as assigned by the Department of Labor and Workforce Development pursuant to the provisions of the "unemployment compensation law," R.S.43:21-1 et seq., by each employer and shall maintain the identification number in their records and shall include the identification number on policies of insurance to be filed with the Compensation Rating and Inspection Bureau.

If the employer has been exempted from or is otherwise not subject to the provisions of the "unemployment compensation law," the mutual association or stock company writing workers' compensation insurance or employer's liability insurance coverage on risks of that employer shall, in a form and manner prescribed by the division, assign an identification number to that employer.

If an employer fails or refuses to comply with the reporting requirements of this subsection, the mutual association or stock company shall immediately notify the Division of Workers' Compensation of such failure or refusal. Failure or refusal without reasonable cause shall result in the assessment of a penalty of up to \$1,000 for each failure or refusal which shall be enforceable on a petition filed by the "uninsured employer's fund" in a summary proceeding before a judge of compensation upon notice to the employer and the proceeds of which shall be paid into the "uninsured employer's fund." Likewise, if a mutual association or stock company fails or refuses without reasonable cause to comply with the reporting requirements of this subsection and its insured employer has complied with those reporting requirements, a penalty of up to \$1,000 for each such failure or refusal shall be enforceable on a petition filed by the "uninsured employer's fund" in a summary proceeding before a judge of compensation upon notice to the mutual association or stock company and any proceeds of the penalty shall be paid into the "uninsured employer's fund."

c. On and after July 1, 1996 the Compensation Rating and Inspection Bureau shall record and maintain the employer identification numbers received from mutual associations and stock companies pursuant to subsection b. of this section. The bureau shall, upon request of the Division of Workers' Compensation, provide to the division information, in a form and manner as prescribed by the division, with respect to the workers' compensation or employer's liability insurance coverage status of employers in this State, including the employer identification numbers.

d. On or before March 1, 1996 the Department of Banking and Insurance shall provide to the Division of Workers' Compensation a complete list of all employers engaged in business in this State who have been authorized, pursuant to the provisions of R.S.34:15-77 et seq., to self-insure for the payment of compensation. After that date, the department shall continue to provide notification to the division, in a form and manner as prescribed by the division, of any newly approved self-insured employer or the rescission of the authority for any previously approved employer to self-insure. On or before July 1, 2008 and thereafter, as may be requested by the division and in a form and manner as prescribed by the division, the Department of Banking and Insurance shall provide to the division a complete list of all mutual associations and stock companies authorized to write workers' compensation or employer's liability insurance coverage on risks in the State.

3. This act shall take effect immediately.

Approved October 1, 2008.