

*State of New Jersey*  
*Department of Labor and Workforce Development*  
*Division of Workers' Compensation*

# *Workers' Compensation Law*

Title 34, Chapter 15, Articles 1 to 10, Inclusive  
(R.S. 34:15-1 to R.S. 34:15-142)  
as amended and supplemented

Chris Christie  
Governor

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rev. date January 17, 2010

## FOREWORD

This material is a compilation of the statutes and certain rules of court pertaining to the New Jersey Workers' Compensation Law. It is published for the information and use of the public. The official text of the statutes is to be found in the Revised Statutes of New Jersey and the annual editions of the Pamphlet Laws.

While every effort has been made to ensure accuracy in the presentation of this material, errors of omission or commission contained herein may not be used as a basis for action against the Division of Workers' Compensation, the Department of Labor, the State of New Jersey or its employees, representatives or agents.

Except through amendments and supplements to the statutes enacted since 1950, terminology referring to the Department of Labor and Industry, the Workmen's Compensation Bureau, etc., have been retained in the statutes and is reprinted herein. The following should be used in substituting the contemporary designations for those previously used.

### PRIOR REFERENCE

Department of Labor and Industry

Department of Labor

Department of Banking and Insurance

Commissioner of Labor and Industry

Commissioner of Labor

Commissioner of Banking and Insurance

Workmen's Compensation Bureau

Director of the Workmen's Compensation Bureau

Secretary of the Workmen's Workers' Compensation Bureau

Deputy Commissioner of Workmen's Compensation

Deputy Director of Workmen's Compensation

### CURRENT REFERENCE

Department of Labor and Workforce Development

Department of Labor and Workforce Development

Department of Insurance

Commissioner of Labor and Workforce Development

Commissioner of Labor and Workforce Development

Commissioner of Insurance

Division of Workers' Compensation

Director of the Division of Workers' Compensation

Secretary of the Division of Compensation

Judge of Compensation

Judge of Compensation

rev. date January 17, 2010

## **WORKERS' COMPENSATION**

### **Article 1. ACTIONS AT LAW.**

- [34:15-1.](#) Employees' right to recover for negligent injury; willful negligence as defense; jury question.
- [34:15-2.](#) Defenses abolished.
- [34:15-3.](#) Contract not to bar liability.
- [34:15-4.](#) Death of employee.
- [34:15-5.](#) Burden of proof.
- [34:15-6.](#) Liens for legal services or disbursements.

### **Article 2. ELECTIVE COMPENSATION.**

- [34:15-7.](#) Compensation by agreement; defenses, burden of proof.
- [34:15-7.1.](#) Horseplay or skylarking on part of fellow employee.
- [34:15-7.2.](#) Claim based on cardiovascular or cerebral vascular causes; preponderance of credible evidence of proof of cause by work effort.
- [34:15-7.3.](#) Cardiovascular or cerebrovascular injury or death of police, fire, or emergency personnel in response to an emergency; presumption of compensability.
- [34:15-8.](#) Election surrender of other remedies.
- [34:15-9.](#) Presumption as to acceptance of elective compensation provisions.
- [34:15-10.](#) Employment of minors; extra compensation when illegally employed; exceptions.
- [34:15-11.](#) Termination of contract.
- [35:15-12.](#) Schedule of payments.
- [34:15-12.1.](#) Employees receiving subsistence payments from Veterans Administration; special benefits.
- [34:15-12.2.](#) Fund from which special benefit payable.
- [34:15-12.3.](#) Amount of special benefit.
- [34:15-12.4.](#) Application for special benefits; payment.

- [34:15-12.5.](#) Retroactive effect.
- [34:15-12.6.](#) Period for making application.
- [34:15-12.7.](#) Damage to prosthetic devices, hearing aids, artificial members; dental appliances or eyeglasses; liability.
- [34:15-13.](#) Death compensation for; computation and distribution.
- [34:15-14.](#) Waiting period
- [34:15-15.](#) Medical and hospital service.
- [34:15-15.1.](#) Reimbursement of insurance company or others paying medical, surgical or hospital expenses.
- [34:15-15.2.](#) Hospital service; care required; expenses
- [34:15-15.3.](#) Motion by worker for emergent medical treatment.
- [34:15-15.4](#) Designation of contact person by carrier, self-insured employer.
- [34:15-16.](#) Compensation to run consecutively; payment for compensation, medical treatment, etc, after termination of liability
- [34:15-17.](#) Notification of employer.
- [34:15-18.](#) Service of notice; form; sufficiency.
- [34:15-19.](#) Examination of employee as to physical condition; X-rays.
- [34:15-20.](#) Dispute; submission to division; order approving settlement.
- [34:15-21.](#) Payments in case of death; to whom made; bond.
- [34:15-22.](#) Dispute; procedure; agreement no bar to determination on merits.
- [34:15-23.](#) Refusal of medical and surgical treatment by employee.
- [34:15-24.](#) Payment of whole award in trust.
- [34:15-25.](#) Commutation of award.
- [34:15-26.](#) Counsel fees.
- [34:15-27.](#) Modification of agreement; review of award, determination, rule for judgment or order approving settlement.
- [34:15-28.](#) Interest on payments withheld.
- [34:15-28.1.](#) Delay or refusal in payment of temporary disability compensation; penalty.

rev. date January 17, 2010

- [34:15-28.2.](#) Powers of Judges of Compensation
- [34:15-28.3.](#) Fines, Penalties, assessments, costs not included in expense base of insurer
- [34:15-28.4.](#) Rules, regulations.
- [34:15-29.](#) Compensation preferential lien; claim not assignable; set offs.
- [34:15-30.](#) Occupational disease; compensation for death or injury; exception.
- [34:15-31.](#) “Compensable occupational disease” defined.
- [34:15-32.](#) Occupational disease; determining disability and amount of compensation
- [34:15-33.](#) Notice to employer or insurance carrier of occupational disease.
- [34:15-33.2.](#) Effective date.
- [34:15-33.3](#) Application to uninsured employer’s fund for certain claims for exposure to asbestos.
- [34:15-34.](#) Time for claiming compensation for occupational disease.
- [34:15-35.](#) Provisions applicable to occupational diseases; claim for accident excluded.
- [34:15-35.10.](#) Occupational hearing loss.
- [34:15-35.11.](#) Definitions.
- [34:15-35.12.](#) Degree of hearing loss; determination of degree.
- [34:15-35.13.](#) Liability for hearing loss; previous hearing loss; audiometric testing.
- [34:15-35.14.](#) Administration of testing; fraud.
- [34:15-35.15.](#) Frequencies; evaluation of hearing loss.
- [34:15-35.16.](#) Hearing tests; instruments; test conditions.
- [34:15-35.17.](#) Audiometric technician to perform hearing test; audiologic evaluation.
- [34:15-35.18.](#) Compensation amount.
- [34:15-35.19.](#) Filing claims; time limitations.
- [34:15-35.20.](#) Time for filing claims; date of disability.
- [34:15-34.21.](#) Award; use of hearing aids.
- [34:15-35.22.](#) Failure to use protective devices; compensation for hearing loss.

### **Article 3. DEFINITIONS AND GENERAL PROVISIONS.**

- [34:15-36.](#) Definitions.
- [34:15-37.](#) Wages; computation.
- [34:15-38.](#) Method of calculating compensation for temporary disability.
- [34:15-39.](#) Agreement and releases invalid.
- [34:15-39.1.](#) Unlawful discharge of, or discrimination against, employee claiming compensation benefits; penalty.
- [34:15-39.2.](#) Additional penalty; summary recovery.
- [34:15-39.3.](#) Liability of employer for penalty.
- [34:15-40.](#) Liability of third party.
- [34:15-41.](#) Claims barred after two years.
- [34:15-41.1.](#) Claimant in country at war with United States or with which postal communications are suspended; limitations.
- [34:15-42.](#) Constitutionality and construction.
- [34:15-43.](#) Compensation for injury in line of duty
- [34:15-43.1](#) Public employment under plan of relief “casual employment”.
- [34:15-43.2.](#) Volunteer fire department members; respiratory diseases; presumption of occupational disease.
- [34:15-43.3.](#) Time of development or first manifestation of respiratory disease.
- [34:15-43.4.](#) Park volunteers; eligibility for compensation for injury, death or both.
- [34:15-44.](#) Names of public employees carried on payroll.
- [34:15-45.](#) Guardian’s compromise of claim.
- [34:15-46.](#) Parent to act as guardian; release a complete discharge.
- [34:15-47.](#) Blank
- [34:15-48.](#) Representative appointed for compensation beneficiary.

### **Article 4. CLAIMS AND DETERMINATION THEREOF.**

- [34:15-49.](#) Original jurisdiction of claims; salaries of director and judges; qualifications of judges.

- [34:15-49.1.](#) Judges of compensation; appointment of referees with service over 10 years; compensation.
- [34:15-49.2.](#) Inapplicability of mandatory retirement for workers' compensation judges, certain
- [34:15-49.3.](#) Workers' compensation judges permitted to work beyond age 70
- [34:15-50.](#) Approval and filing of agreement.
- [34:15-51.](#) Claimant required to file petition within two years; contents; minors.
- [34:15-52.](#) Copy of petition served on employer; answer required
- [34:15-53.](#) Time, place and notice of hearing; adjournment.
- [34:15-54.](#) Dismissal of petition; notice; reinstatement.
- [34:15-54.1.](#) Referee's powers as to dismissal of petitions for want of prosecution and reinstatement; discontinuances.
- [34:15-55.](#) Service of papers.
- [34:15-55.1.](#) Secretary of workmen's compensation bureau as agent for service of process on nonresidents; method and effect of service; continuances.
- [34:15-56.](#) Rules of evidence.
- [34:15-57.](#) Summary hearing; power to modify and commute award, determination and rule for judgment or order approving settlement.
- [34:15-57.1.](#) Reimbursement of benefits paid under Temporary Disability Benefits Law.
- [34:15-57.2.](#) Inquiry as to other payments received before paying compensation; proof of amounts paid.
- [34:15-57.3.](#) Effective date.
- [34:15-57.4.](#) Workers' compensation fraud; criminal and civil penalties.
- [34:15-58.](#) Decision, award, determination and rule for judgment or order approving settlement and statement to be filed; receipts; bar.
- [34:15-59.](#) Docket; records.
- [34:15-60.](#) Subpoenas; witness fees; punishment for misconduct.
- [34:15-61.](#) Administering oaths; perjury.
- [34:15-62.](#) Public hearings.
- [34:15-63.](#) No filing fees.

rev. date January 17, 2010

- [34:15-64.](#) Rules and regulations; witness fees; attorney fees; costs.
- [34:15-65.](#) Deposition of absent witness.
- [34:15-66.](#) Appeal; cost.
- [34:15-66.1.](#) Judgment docketed; execution; supplementary proceedings.
- [34:15-67.](#) Repealed by P.L. 1953, c.33, p.599, §59.
- [34:15-68.](#) Physical examination of employee.
- [34:15-69.](#) Copy of judgment to be filed with director.

#### **Article 4A. RELIEF FROM LIABILITY FOR AWARDS.**

- [34:15-69.1.](#) Discontinuance or sale of business; discharge of employer from further liability; assumption of obligations by third party.
- [34:15-69.2.](#) Other discharging employer; filing; effect as to third party assuming obligations.
- [34:15-69.3.](#) Applicability of provisions of Title to third party assuming obligations.
- [34:15-70.](#) Short title.
- [34:15-71.](#) Employer's obligation to injured employee.
- [34:15-72.](#) Employers not electing benefits of compensation law required to insure.
- [34:15-73.](#) Proof of compliance.
- [34:15-74.](#) Compensation insurance by governing body and fire district committee for volunteer reserve or auxiliary policemen, firemen and first aid and emergency squad workers.
  - [34:15-74.1.](#) Compensation insurance by volunteer fire company for volunteer firemen and volunteer first aid or rescue squad workers.
  - [34:15-74.2.](#) Compensation insurance by board of education for members of board.
- [34:15-75.](#) Volunteer firemen, county fire marshals, volunteer first aid or rescue squad workers, volunteer drivers of ambulances, forest fire wardens or fighters, members of boards of education, and volunteer special, reserve or auxiliary policemen; basis of compensation.
- [34:15-76.](#) Payments; laws governing; premium paid from tax levy.
- [34:15-77.](#) Employer carrying own insurance.
  - [34:15-77.1](#) Hospitals; group self-insurance; conditions.

rev. date January 17, 2010

- [34:15-77.2.](#) Liability for compensation prescribed by Title 34; bankruptcy of participating employer.
- [34:15-77.3.](#) Addition or termination of participating employers; notice.
- [34:15-77.4.](#) Termination of plan; surety bond; insurance policy.
- [34:15-77.5.](#) Financial statement; description of service organizations.
- [34:15-77.6.](#) Annual examination.
- [34:15-77.7.](#) Denial of application or revocation of consent.
- [34:15-77.8.](#) Rules and regulations.
- [34:15-78.](#) Insurance in stock or mutual company; notice filed by company; domestic help excluded.

#### **Article 5. COMPULSORY INSURANCE.**

- [34:15-79.](#) Penalties for failure to carry insurance.
- [34:15-79.1.](#) Proof of workers' compensation coverage required with certain annual reports of employers.
- [34:15-80.](#) Notices of insurance posted.
- [34:15-81.](#) Cancellation of contract; notice.
- [34:15-82.](#) Liability for injuries or death.
- [34:15-83.](#) Insurance contract for benefit of employees and dependents.
- [34:15-84.](#) Enforcement of provisions.
- [34:15-85.](#) Knowledge of injury; jurisdiction.
- [34:15-86.](#) Insurance carrier directly liable.
- [34:15-87.](#) Limitations and restrictions on liability.
- [34:15-88.](#) Classification of risks, rates, schedules and rules; approval by insurance commissioner.
- [34:15-89.](#) Repealed on October 1, 2008 by L. 2008, c. 97, § 3
- [34:15-89.1.](#) Notification to mutual associations, stock companies of requirements of employer ID numbers.
- [34:15-90.](#) Repealed on October 1, 2008 by L. 2008, c. 97, § 3
- [34:15-90.1.](#) Compensation Rating and Inspection Bureau continued; directors, appointment, terms.

- [34:15-90.2](#) Authority of Compensation Rating and Inspection Bureau.
- [34:15-90.3](#) Effective Date
- [34:15-91.](#) Actuary and additional assistants in insurance department.
- [34:15-92.](#) Domestic help excepted.
- [34:15-92.1.](#) Other exceptions.
- [34:15-93.](#) Expense of enforcement; payments by insurers.
- [34:15-94.](#) Annual surcharge upon all policyholders and self-insured employers; annual report of total compensation payments and earned premiums; apportionment, determination and collection of surcharges; penalties; use of funds.
- [34:15-95.](#) Second injury fund; compensation payments for subsequent permanent injuries; persons eligible; time for payments; costs of administration, expenses, etc.; accounting to state treasurer.
- [34:15-95.1.](#) Application for benefits; review; Commissioner of Labor as Party.
- [34:15-95.2.](#) Vested rights.
- [34:15-95.3.](#) Application of chapter; exemption of mutual agricultural insurance companies.
- [34:15-95.4.](#) Special adjustment benefit payment; dependent benefits; payment period; amount; supplement.
- [34:15-95.5.](#) Reduction of disability benefits for persons under age sixty-two; exception.

#### **Article 6. REPORTS BY EMPLOYER AND INSURERS.**

- [34:15-96.](#) Reports of accident.
- [34:15-97.](#) Report by employer not carrying insurance. Repealed on January 5, 2002 by L. 2001, c. 326, § 10.
- [34:15-98.](#) Report by insurance carrier.
- [34:15-99.](#) Report not made public.
- [34:15-100.](#) Medical reports.
- [34:15-101.](#) Penalty for noncompliance.
- [34:15-102.](#) Rules and regulations; agreements filed.

rev. date January 17, 2010

## **Article 7. INSOLVENT INSURANCE CARRIERS; SECURITY FUNDS.**

- [34:15-103.](#) Short title.
- [34:15-104.](#) Definitions.
- [34:15-105.](#) Stock workers' compensation security fund; creation; purposes; source of funds; administration; claims under federal Longshore and Harbor Workers' Compensation Act.
- [34:15-106.](#) Returns by stock carriers; "net written premiums," defined.
- [34:15-107.](#) Contributions to stock fund.
- [34:15-108.](#) Contributions to stock fund to cease when fund equals five per cent of loss reserves; resumption of contributions; fluctuation or rates by regulation.
- [34:15-109.](#) Regulations; examination of correctness or returns; penalties.
- [34:15-110.](#) Fund kept separate; investment; treasurer may sell securities.
- [34:15-111.](#) Payment of claims on application therefor; fund may recover against insurance carrier but not from employer.
- [34:15-112.](#) Mutual fund created; how derived; supplement to special adjustment payment; claims arising under federal Longshore and Harbor Workers' Compensation Act.
- [34:15-113.](#) Returns by mutual carriers; "net written premiums," defined.
- [34:15-114.](#) Contributions to mutual fund.
- [34:15-115.](#) Contributions to the mutual fund to cease where fund exceeds five per cent of loss reserves; resumption of contributions; fluctuation of rates by regulation; distribution of balance after liquidation of all liabilities.
- [34:15-116.](#) Certain stock fund regulations applicable to mutual fund.
- [34:15-117.](#) Insolvency of stock or mutual carrier; notice to workmens' compensation bureau; report of condition.
- [34:15-118.](#) Powers and duties of commissioner of banking and insurance with respect to compensation claims.
- [34:15-119.](#) Administration expenses; report to legislature.
- [34:15-120.](#) No deposit of securities required by contributing carriers.

## **ARTICLE 7A. UNINSURED EMPLOYER'S FUND.**

- [34:15-120.1.](#) Creation; administration, maintenance and disbursement; penalties on
- rev. date January 17, 2010

employers.

- [34:15-120.2.](#) Award payable and benefit payments out of fund.
- [34:15-120.3.](#) Default by uninsured employer; judgment.
- [34:15-120.4.](#) Payments upon application and approval by commissioner; review; employees; legal counsel.
- [34:15-120.5.](#) Subrogation; right of fund against employer.
- [34:15-120.6.](#) Annual accounting by commissioner; payments upon warrants.
- [34:15-120.7.](#) Rules and regulations.
- [34:15-120.8.](#) Limited liability.
- [34:15-120.9.](#) Action against employer to recover damages or costs for unpaid compensable injury or death.
- [34:15-120.10.](#) Administrative expenses; payment from fund.
- [34:15-120.11.](#) Benefit payments to eligible individuals and payments under workers' compensation law made by liable persons; enforcement.
- [34:15-120.12.](#) Notice in writing by claimant of change in income that may affect eligibility for benefits; recovery of payment procured by fraud, mistake or unreported change in income.
- [34:15-120.13.](#) Exhaustion of remedies at law against uninsured delinquent employer.
- [34:15-120.14.](#) Inapplicability of P.L.1988, c.25 on obligations of insurance carriers or self insured employers.

#### **Article 7B. SELF-INSURERS GUARANTY ASSOCIATION**

- [34:15-120.15.](#) Definitions.
- [34:15-120.16.](#) New Jersey self-insurers guaranty association; membership required to act as a self-insurer; exceptions; voluntary withdrawal from association.
- [34:15-120.17.](#) Board of directors; membership; qualifications; terms of office; vacancies; expenses.
- [34:15-120.18.](#) Association obligated for payment of compensation; powers.
- [34:15-120.19.](#) Insolvency fund.
- [34:15-120.20.](#) Plan of operation; failure to submit plan; purpose of plan.
- [34:15-120.21.](#) Written notice of bankruptcy proceedings; determination of insolvency.

rev. date January 17, 2010

- [34:15-120.22.](#) Powers of department.
- [34:15-120.23.](#) Assignment of rights against insolvent member to association.
- [34:15-120.24.](#) Detection and prevention of employer insolvencies.
- [34:15-120.25.](#) Examination and regulation of association by department; annual financial report.
- [34:15-120.26.](#) Immunity from liability.
- [34:15-120.27.](#) Stay of proceedings upon insolvency of member.
- [34:15-120.28.](#) Period of limitations for filing claims.
- [34:15-120.29.](#) Additional obligations of association.
- [34:15-120.30.](#) Construction of act.

#### **Article 8. DESTRUCTION OF RECORDS.**

- [34:15-121.](#) Records of worker's compensation formal cases.
- [34:15-122.](#) Records of worker's compensation of kind specified in article six.
- [34:15-123.](#) Agreements for payment of worker's compensation.
- [34:15-124.](#) Records and papers not part of worker's compensation formal cases.
- [34:15-125.](#) Microfilmed records.
- [34:15-126.](#) Microfilm, force and effect of.
- [34:15-127.](#) Liability for destruction of records.

#### **Article 9. INSPECTION OF RECORDS.**

- [34:15-128.](#) Limited right to inspect or copy records.
- [34:15-128.1.](#) Short Title
- [34:15-128.2.](#) Definition relating to "Workers' Compensation Medical Information Confidentiality Act".
- [34:15-128.3.](#) Disclosure of medical information
- [34:15-128.4.](#) Withholding information unlawful in certain circumstances
- [34:15-128.5.](#) Violations; fine and penalty

rev. date January 17, 2010

## **Article 10. HORSE RACING COMPENSATION BOARD**

- [34:15-129.](#) Short title; New Jersey Horse Racing Injury Compensation Board Act
- [34:15-130.](#) Legislative findings and declaration.
- [34:15-131.](#) Definitions
- [34:15-132.](#) New Jersey horse racing injury compensation board established.
- [34:15-133.](#) Powers of board.
- [34:15-134.](#) Insurance coverage; assessments
- [34:15-134.1.](#) Trainer to carry compensation insurance for employees, eligibility for coverage.
- [34:15-135.](#) Employee, employer relationship under the act.
- [34:15-136.](#) Employee wages to be computed under (§) 34:15-37 for purposes of determining benefits.
- [34:15-136.1.](#) Documentation, maintenance of complete and accurate records of wages paid.
- [34:15-137.](#) Existing insurance contracts or policies not affected.
- [34:15-138.](#) Plan of operation; required contents.
- [34:15-139.](#) Annual financial report
- [34:15-140.](#) Board exempt from all fees and state taxes.
- [34:15-141.](#) Liability of board and state.
- [34:15-142.](#) Applicability of (§) 34:15-1 et seq.

## Article 1. ACTIONS AT LAW

**34:15-1. Employees' right to recover for negligent injury; willful negligence as defense; jury question.** When personal injury is caused to an employee by accident arising out of and in the course of his employment, of which the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he shall receive compensation therefor from his employer, provided the employee was himself not willfully negligent at the time of receiving such injury, and the question of whether the employee was willfully negligent shall be one of fact to be submitted to the jury, subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence.

**34:15-2. Defenses abolished.** The right to compensation as provided by this article shall not be defeated upon the ground that the injury was caused in any degree by the negligence of a fellow employee; or that the injured employee assumed the risks inherent in or incidental to or arising out of his employment or arising from the failure of the employer to provide and maintain safe premises and suitable appliances; which said grounds of defense are hereby abolished.

**34:15-3. Contract not to bar liability.** If an employer enters into a contract, written or verbal, with an independent contractor to do part of such employer's work, or if such contractor enters into a contract, written or verbal, with a subcontractor to do all or any part of such work comprised in such contractor's contract with the employer, such contract or subcontract shall not bar the liability of the employer for injury caused to an employee of such contractor or subcontractor by any defect in the condition of the ways, works, machinery or plant if the defect arose or had not been discovered and remedied through the negligence of the employer or some one intrusted by him with the duty of seeing that they were in proper condition. This section shall apply only to actions arising under this article.

**34:15-4. Death of employee.** The provisions of this article shall apply to any claim for the death of an employee arising under sections 2A:31-1 to 2A:31-6 of the New Jersey Statutes.

**34:15-5. Burden of proof.** In all actions at law brought pursuant to this article, the burden of proof to establish willful negligence of the injured employee shall be upon the defendant.

**34:15-6. Liens for legal services or disbursements.** No claim for legal services or disbursements pertaining to any demand or suit under this chapter shall be an enforceable lien against the amount paid as compensation, unless approved in writing by the court in which the claim is sued upon, or in case of settlement without trial, by the Superior Court, unless notice in writing be given the defendant of such claim, in which event the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided.

## Article 2. ELECTIVE COMPENSATION

**34:15-7. Compensation by agreement; defenses; burden of proof.** When employer and employee shall by agreement, either express or implied, as hereinafter provided, accept the provisions of this article compensation for personal injuries to, or for the death of, such employee by accident arising out of and in the course of employment shall be made by the employer without regard to the negligence of the employer, according to the schedule contained in sections 34:15-12 and 34:15-13 of this Title in all cases except when the injury or death is intentionally self-inflicted, or when intoxication or the unlawful use of controlled dangerous substances as defined in the “New Jersey Controlled Dangerous Substances Act,” P.L.1970, c. 266 (C. 24:21-1 et seq.), or willful failure to make use of a reasonable and proper personal protective device or devices furnished by the employer, which has or have been clearly made a requirement of the employee’s employment by the employer and uniformly enforced and which an employer can properly document that despite repeated warnings, the employee has willfully failed to properly and effectively utilize, is the natural and proximate cause of injury or death provided, however, this latter provision shall not apply where there is such imminent danger or need for immediate action which does not allow for appropriate use of personal protective device or devices, and the burden of the proof of such fact shall be upon the employer or when recreational or social activities, unless such recreational or social activities are a regular incident of employment and produce a benefit to the employer beyond improvement in employee health and morale, are the natural and proximate cause of the injury or death.

**34:15-7.1. Horseplay or skylarking on part of fellow employees.** An accident to an employee causing his injury or death, suffered while engaged in his employment but resulting from horseplay or skylarking on the part of a fellow employee, not instigated or taken part in by the employee who suffers the accident, shall be construed to have arisen out of and in the course of the employment of such employee and shall be compensable under the act hereby supplemented<sup>1</sup> accordingly.

**34:15-7.2. Claim based on cardiovascular or cerebral vascular causes; preponderance of credible evidence of proof of cause by work effort.** In any claim for compensation for injury or death from cardiovascular or cerebral vascular causes, the claimant shall prove by a preponderance of the credible evidence that the injury or death was produced by the work effort or strain involving a substantial condition, event or happening in excess of the wear and tear of the claimant’s daily living and in reasonable medical probability caused in a material degree the cardiovascular or cerebral vascular injury or death resulting therefrom.

Material degree means an appreciable degree or a degree substantially greater than de minimis.

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<sup>1</sup> Compensation for personal injuries to, or death of employee, by accident arising out of and in course of employment, see § 34:15-7

**34:15-7.3. Cardiovascular or cerebrovascular injury or death of police, fire or emergency personnel in response to emergency; presumption of compensability.**

1.a. For any cardiovascular or cerebrovascular injury or death which occurs to an individual covered by subsection b. of this section while that individual is engaged in a response to an emergency, there shall be a rebuttable presumption that the injury or death is compensable under R.S. 34:15-1 et seq., if that injury or death occurs while the individual is responding, under orders from competent authority, to a law enforcement, public safety or medical emergency as defined in subsection c. of this section.

b. This section shall apply to:

- (1) Any permanent or temporary member of a paid or part-paid fire or police department and force;
- (2) Any member of a volunteer fire company;
- (3) Any member of a volunteer first aid or rescue squad; and
- (4) Any special, reserve, or auxiliary policeman doing volunteer duty.

c. As used in this section, “law enforcement, public safety or medical emergency” means any combination of circumstances requiring immediate action to prevent the loss of human life, the destruction of property, or the violation of the criminal laws of this State or its political subdivisions, and includes, but is not limited to, the suppression of a fire, a firemanic drill, the apprehension of a criminal, or medical and rescue service.

**34:15-8. Election surrender of other remedies.** Such agreement shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in this article and an acceptance of all the provisions of this article, and shall bind the employee and for compensation for the employee’s death shall bind the employee’s personal representatives, surviving spouse and next of kin, as well as the employer, and those conducting the employer’s business during bankruptcy or insolvency.

If an injury or death is compensable under this article, a person shall not be liable to anyone at common law or otherwise on account of such injury or death for any act or omission occurring while such person was in the same employ as the person injured or killed, except for intentional wrong.

**34:15-9. Presumption as to acceptance of elective compensation provisions.** Every contract of hiring made subsequent to the fourth day of July, one thousand nine hundred and eleven, shall be presumed to have been made with reference to the provisions of this article, and unless there be as a part of such contract an express statement in writing prior to any accident, either in the contract itself or by written notice from either party to the other, that the provisions of this article are not intended to apply, then it shall be presumed that the parties have accepted the provisions of this article and have agreed to be bound thereby.

Every contract of hiring made or implied or in operation before the fourth day of July, one thousand nine hundred and eleven, shall be presumed to continue subject to the provisions of this article unless either party shall prior to accident, in writing, notify the other party to such contract that the provisions of this article are not intended to apply.

rev. date January 17, 2010

**34:15-10. Employment of minors; extra compensation when illegally employed; exceptions.** In the employment of minors, this article shall be presumed to apply unless the notice be given by or to the parent or guardian of the minor. If the injured employee at the time of the accident or compensable occupational disease is a minor under 14 years of age employed in violation of the labor law or a minor between 14 and 18 years of age employed, permitted or suffered to work without an employment certificate or special permit if required by law or at an occupation prohibited at the minor's age by law, a compensation or death benefit shall be payable to the employee or his dependents which shall be double the amount payable under the schedules provided in R.S. 34:15-12 and R.S. 34:15-13.

The possession of such duly issued employment certificate shall be conclusive evidence for an employer that the minor has reached the age certified to therein and no extra compensation shall be payable to any minor engaged in an employment allowed by the law for the age and sex certified to in such certificate. If the certificate presented by the employee as one issued to that person shall have been really issued to another child and the real age of the employee shall be such that employment in any capacity or in the particular capacity the employee was employed by the employer was prohibited and if the employer shall show to the satisfaction of the Division of Workers' Compensation that the employer accepted the certificate in good faith as having been issued to the employee and could not have, despite reasonable diligence, discovered the fraud, in such event no extra compensation shall be paid to the employee illegally employed.

The employer alone and not the insurance carrier shall be liable for the extra compensation or death benefit which is over and above the amount of the compensation or death benefit provided under R.S. 34:15-12 or R.S. 34:15-13. Any provision in an insurance policy undertaking to relieve an employer from the liability for the extra compensation or extra death benefit shall be void.

Nothing in this chapter contained shall deprive an infant under the age of 18 years of the right or rights now existing to recover damages in a common law or other appropriate action or proceeding for injuries received by reason of the negligence of his or her master.

Nothing in this section regarding the payment of a compensation or death benefit in double the amount payable under the schedules provided in R.S. 34:15-12 and R.S. 34:15-13 shall apply to: members of a junior firemen's auxiliary established pursuant to N.J.S.A. 40A:14-95; employees, of the age of 18 years or under, employed in summer camps operated by the Boy Scouts of America, the Girl Scouts of America, the Knights of Columbus, the Young Men's Christian Association, the Young Women's Christian Association, the Young Men's Hebrew Association, or any domestic corporation organized solely for religious or charitable purposes; student-learners employed in a cooperative vocational education program approved by the State Board of Education; persons, 18 years of age or younger, participating, under the supervision of the Palisades Interstate Park Commission, in volunteer programs in that part of the Palisades Interstate

rev. date January 17, 2010

Park located in New Jersey; or persons, 18 years of age or younger, doing volunteer work for the Division of Parks and Forestry, the Division of Fish, Game and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, as authorized by the Commissioner of Environmental Protection.

**34:15-11. Termination of contract.** The contract for the operation of the provisions of this article may be terminated by either party upon sixty days' notice in writing prior to any accident.

**34:15-12. Schedule of payments.** Following is a schedule of compensation:

a. For injury producing temporary disability, 70% of the worker's weekly wages received at the time of the injury, subject to a maximum compensation of 75% of the average weekly wages earned by all employees covered by the "unemployment compensation law" (R.S. 43:21-1 et seq.) and a minimum of 20% of such average weekly wages a week. This compensation shall be paid during the period of such disability, not however, beyond 400 weeks. The amount of the maximum compensation shall be computed, determined, rounded out to the nearest dollar, and promulgated by the Commissioner of Labor on or before September 1 in each year based on said average weekly wages as of the calendar year preceding, and shall be effective as to injuries occurring in the calendar year following such promulgation. In any year in which the maximum benefit rate based upon said computation would not be increased or decreased beyond \$1.00 in amount, the rate promulgated theretofore shall continue.

b. For disability total in character and permanent in quality, 70% of the weekly wages received at the time of injury, subject to a maximum and a minimum compensation as stated in subsection a. of this section. This compensation shall be paid for a period of 450 weeks, at which time compensation payments shall cease unless the employee shall have submitted to such physical or educational rehabilitation as may have been ordered by the rehabilitation commission, and can show that because of such disability it is impossible for the employee to obtain wages or earnings equal to those earned at the time of the accident, in which case further weekly payments shall be made during the period of such disability, the amount thereof to be the previous weekly compensation payment diminished by that portion thereof that the wage, or earnings, the employee is then able to earn, bears to the wages received at the time of the accident. If the employee's wages or earnings equal or exceed wages received at the time of the accident, then the compensation rate shall be reduced to \$5.00. In calculating compensation for this extension beyond 450 weeks the above minimum provision shall not apply. This extension of compensation payments beyond 450 weeks shall be subject to such periodic reconsiderations and extensions as the case may require, and shall apply only to disability total in character and permanent in quality, and shall not apply to any accident occurring prior to July 4, 1923.

c. For disability partial in character and permanent in quality, weekly compensation shall be paid based upon 70% of the weekly wages received at the time of the injury, subject to a maximum compensation per week of 75% of the Statewide average weekly wages (SAWW) earned by all employees covered by the "unemployment compensation law" (R.S. 43:21-1 et seq.) and paid in accordance with the following "Disability Wage and Compensation Schedule" and a minimum of \$35.00 per week. The

rev. date January 17, 2010

amount of awards for up to and including 180 weeks shall remain at the amounts listed in the “Disability Wage and Compensation Schedule” until January 1, 1982. On January 1, 1982, the dollar amounts listed for the first 180 weeks in the “Disability Wage and Compensation Schedule” shall be replaced by the following percentages of the Statewide average weekly wage:

\$47-20% of the Statewide average weekly wages, hereinafter referred to as “SAWW”	\$61-26% SAWW
\$49-21% SAWW	\$63-27% SAWW
\$51-22% SAWW	\$66-28% SAWW
\$54-23% SAWW	\$68-29% SAWW
\$56-24% SAWW	\$70-30% SAWW
\$59-25% SAWW	\$73-31% SAWW
\$82-35% SAWW	\$75-32% SAWW
	\$77-33% SAWW
	\$80-34% SAWW
	\$82-35%SAWW

In the event that the 20% limitation for attorney fees as set forth in R.S. 34:15-64 is reduced to a maximum of 10% before January 1, 1982, the above schedule shall be effective within 60 days of such reduction in attorney fees. All amounts in the “Disability Wage and Compensation Schedule” shall be rounded out to the nearest dollar. When a claim petition alleges more than one disability, the number of weeks in the award shall be determined and entered separately for each such disability and the number of weeks for each disability shall not be cumulative when entering an award.

DISABILITY WAGE AND COMPENSATION SCHEDULE

Weeks of Allowable Compensation	Maximum Weekly Compensation Applicable
First 90 weeks	\$47
91 through 96 weeks	\$49
97 through 102 weeks	\$49 for the first 96 weeks then \$51 for each remaining week
103 through 108 weeks	\$49 for the first 96 weeks then \$51 for the next 6 weeks then \$54 for each remaining week
109-114 weeks	\$49 for the first 96 weeks then \$51 for the next 6 weeks then \$54 for the next 6 weeks then \$56 for each remaining week
115-120 weeks	\$49 for the first 96 weeks

121-126 weeks	<p>then \$51 for the next 6 weeks  then \$54 for the next 6 weeks  then \$56 for the next 6 weeks  then \$59 for each remaining week</p>
127-132 weeks	<p>\$49 for the first 96 weeks  then \$51 for the next 6 weeks  then \$54 for the next 6 weeks  then \$56 for the next 6 weeks  then \$59 for the next 6 weeks  then \$61 for each remaining week</p>
133-138 weeks	<p>\$49 for the first 96 weeks  then \$51 for the next 6 weeks  then \$54 for the next 6 weeks  then \$56 for the next 6 weeks  then \$59 for the next 6 weeks  then \$61 for the next 6 weeks  then \$63 for each remaining week</p>
139-144 weeks	<p>\$49 for the first 96 weeks  then \$51 for the next 6 weeks  then \$54 for the next 6 weeks  then \$56 for the next 6 weeks  then \$59 for the next 6 weeks  then \$61 for the next 6 weeks  then \$63 for the next 6 weeks  then \$66 for each remaining week</p>
145-150 weeks	<p>\$49 for the first 96 weeks  then \$51 for the next 6 weeks  then \$54 for the next 6 weeks  then \$56 for the next 6 weeks  then \$59 for the next 6 weeks  then \$61 for the next 6 weeks  then \$63 for the next 6 weeks  then \$66 for the next 6 weeks  then \$68 for each remaining week</p>
151-156 weeks	<p>\$49 for the first 96 weeks  then \$51 for the next 6 weeks</p>

157-162 weeks

then \$54 for the next 6 weeks  
then \$56 for the next 6 weeks  
then \$59 for the next 6 weeks  
then \$61 for the next 6 weeks  
then \$63 for the next 6 weeks  
then \$66 for the next 6 weeks  
then \$68 for the next 6 weeks  
then \$70 for the next 6 weeks  
then \$73 for each remaining week  
\$49 for the first 96 weeks  
then \$51 for the next 6 weeks  
then \$54 for the next 6 weeks  
then \$56 for the next 6 weeks  
then \$59 for the next 6 weeks  
then \$61 for the next 6 weeks  
then \$63 for the next 6 weeks  
then \$66 for the next 6 weeks  
then \$68 for the next 6 weeks  
then \$70 for the next 6 weeks  
then \$73 for the next 6 weeks  
then \$75 for each remaining week

163-168 weeks

\$49 for the first 96 weeks  
then \$51 for the next 6 weeks  
then \$54 for the next 6 weeks  
then \$56 for the next 6 weeks  
then \$59 for the next 6 weeks  
then \$61 for the next 6 weeks  
then \$63 for the next 6 weeks  
then \$66 for the next 6 weeks  
then \$68 for the next 6 weeks  
then \$70 for the next 6 weeks  
then \$73 for the next 6 weeks  
then \$75 for the next 6 weeks  
then \$77 for each remaining week

169-174 weeks

\$49 for the first 96 weeks  
then \$51 for the next 6 weeks  
then \$54 for the next 6 weeks  
then \$56 for the next 6 weeks  
then \$59 for the next 6 weeks  
then \$61 for the next 6 weeks  
then \$63 for the next 6 weeks  
then \$66 for the next 6 weeks  
then \$68 for the next 6 weeks  
then \$70 for the next 6 weeks  
then \$73 for the next 6 weeks  
then \$75 for the next 6 weeks

	then \$77 for the next 6 weeks
	then \$80 for each remaining week
175-180 weeks	\$49 for the first 96 weeks
	then \$51 for the next 6 weeks
	then \$54 for the next 6 weeks
	then \$56 for the next 6 weeks
	then \$59 for the next 6 weeks
	then \$61 for the next 6 weeks
	then \$63 for the next 6 weeks
	then \$66 for the next 6 weeks
	then \$68 for the next 6 weeks
	then \$70 for the next 6 weeks
	then \$73 for the next 6 weeks
	then \$75 for the next 6 weeks
	then \$77 for the next 6 weeks
	then \$80 for the next 6 weeks
	then \$82 for each remaining week
181-210 weeks.	35% of the Statewide average weekly wages, hereinafter referred to as "SAWW"
211-240 weeks .....	40% of SAWW
241-270 weeks .....	45% of SAWW
271-300 weeks .....	50% of SAWW
301-330 weeks .....	55% of SAWW
331-360 weeks .....	60% of SAWW
361-390 weeks .....	65% of SAWW
391-420 weeks .....	70% of SAWW
421-600 weeks .....	75% of SAWW

Said compensation shall be expressly subject to the provisions of R.S. 34:15-37, and shall be paid to the employee for the period named in the following schedule (paragraphs 1 to 23 inclusive):

Lost Member	Number of Weeks' Compensation
1. Thumb .....	75
2. First finger (commonly called index finger).....	50
3. Second finger .....	40
4. Third finger .....	30
5. Fourth finger (commonly called little finger) .....	20
6. Great toe.....	40
7. Toe, other than a great toe.....	15
8. Hand, or thumb and first and second fingers (on one hand) or four fingers (on one hand).....	245
9. Arm .....	330

rev. date January 17, 2010

10. Foot .....230
11. Leg .....315
12. The loss of the first phalange of the thumb or of any finger shall be considered to be equal to the loss of 1/2 of such thumb or finger, and the compensation shall be for 1/2 of the periods of time above specified. The loss of any portion of the thumb or any finger between the terminal joint and the end thereof shall be compensated for a like proportion of the period of time prescribed for the loss of the first phalange of such member.
13. The loss of the first phalange and any portion of the second shall be considered as the loss of the entire finger or thumb, but in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
14. The loss of the first phalange of any toe shall be considered to be equal to the loss of 1/2 of such toe, and compensation shall be for 1/2 of the period of time above specified.
15. The loss of the first phalange and any portion of the second shall be considered as the loss of the entire toe.
16. For the loss of vision of an eye, 200 weeks.
17. For the enucleation of an eye, 25 weeks, in addition to such compensation, if any, as may be allowable under paragraph 16 of this subsection.
18. For the loss of a natural tooth, four weeks for each tooth lost.
19. For the total loss of hearing in one ear, 60 weeks. For the total loss of hearing in both ears by one accident, 200 weeks.
20. The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof as the result of any one accident, shall constitute total and permanent disability to be compensated according to the provisions of subsection b. of this section.
21. Amputation between the elbow and the wrist shall be considered as the equivalent of the loss of a hand and amputation at the elbow shall be considered equivalent to the loss of the arm. Amputation between the knee and ankle shall be considered as the equivalent of the loss of a foot, and amputation at the knee shall be considered equivalent to the loss of the leg. An additional amount of 30% of the amputation award shall be added to that award to compute the total award made in amputations of body members, provided, however, that this additional amount shall not be subject to legal fees.
22. In all lesser or other cases involving permanent loss, or where the usefulness of a member of any physical function is permanently impaired, the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. In cases in which the disability is determined as a percentage of total and permanent disability, the duration of the compensation shall be a corresponding portion of 600 weeks.

rev. date January 17, 2010

Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, either party may appeal to the Division of Workers' Compensation for a settlement of the controversy.

23. Where there is a traumatic hernia, compensation will be allowed if notice thereof is given by the claimant to the employer within 48 hours after the occurrence of the hernia but any Sunday, Saturday or holiday shall be excluded from this 48-hour period.

d. If previous loss of function to the body, head, a member or an organ is established by competent evidence, and subsequently an injury or occupational disease arising out of and in the course of an employment occurs to that part of the body, head, member or organ, where there was a previous loss of function, then the employer or the employer's insurance carrier at the time of the subsequent injury or occupational disease shall not be liable for any such loss and credit shall be given the employer or the employer's insurance carrier for the previous loss of function and the burden of proof in such matters shall rest on the employer.

e. In case of the death of the person from any cause other than the accident or occupational disease, during the period of payments for permanent injury, the remaining payments shall be paid to such of the deceased person's dependents as are included in the provisions of 34:15-13, or, if no dependents, the remaining amount due, but not exceeding \$3,500.00, shall be paid in a lump sum to the proper person for burial and funeral expenses; but no compensation shall be due any other person than the injured employee on account of compensation being paid in excess of 450 weeks on account of disability total in character and permanent in quality as provided by subsection b. of this section.

**34:15-12.1. Employees receiving subsistence payments from Veterans Administration; special benefits.** Any employee receiving subsistence payments from the Veterans Administration of the Federal Government under the Act of Congress of June twenty-second, one thousand nine hundred and forty-four, known as the Servicemen's Readjustment Act of 1944, or any act amendatory thereof or supplemental thereto, as a veteran, in connection with educational training on the job, and who obtains compensation pursuant to chapter fifteen of Title 34 of the Revised Statutes, and whose wages were less than an amount entitling the employee to the maximum rate of compensation, shall be entitled to the special benefits provided by this act upon the following conditions:

(a) The accident to the employee must have occurred subsequent to July first, one thousand nine hundred and forty-six;

(b) The accident must have occurred under circumstances entitling the employee to compensation under said chapter;

(c) The employee's wages must have been less than forty-five dollars (\$45.00) per week;

(d) The employee's wages must have been received by him during the period for which the subsistence was paid;

rev. date January 17, 2010

(e) The compensation must have included compensation for a permanent disability, either partial or total.

**34:15-12.2. Fund from which special benefit payable.** Any such employee shall be entitled to receive a special benefit payable from the fund provided for by sections 34:15-94 and 34:15-95 of the Revised Statutes.

**34:15-12.3. Amount of special benefit.** The amount of such special benefit shall be computed by determining the difference between the amount of the compensation for such permanent disability and any temporary disability and the amount which such compensation would have been had the employee received such subsistence payments in connection with educational training as wages from his employer instead of from the said veterans administration.

**34:15-12.4. Application for special benefits; payment.** Such special benefits shall be applied for, ordered paid, and payable in similar manner as other payments from said fund to employees are applied for, ordered paid, and payable.

**34:15-12.5. Retroactive effect.** This act<sup>2</sup> shall apply to accidents occurring after July first, one thousand nine hundred and forty-six.

**34:15-12.6. Period for making application.** Applications for such special benefits must be made not later than within one year from the date of the last payment of compensation to the employee.

**34:15-12.7. Damage to prosthetic devices, hearing aids, artificial members; dental appliances or eyeglasses; liability.** Whenever as the result of an accident for which compensation is payable to any employee of any employer under article 2 of chapter 15 of Title 34 of the Revised Statutes,<sup>3</sup> to which this act is a supplement, such employee sustains damage to, or destruction of, a prosthetic device, hearing aid, artificial member, dental appliance or eyeglasses, it shall be the obligation of the employer to repair or replace the same or to make payment of the cost or value thereof, upon claim made therefor, which obligation shall be in addition to the obligation for the payment of the compensation payable to said employee for injuries sustained as a result of such accident.

**34:15-13. Death, compensation for; computation and distribution.** Except as hereinafter provided, in case of death, compensation shall be computed, but not distributed, on the following basis:

a. For one or more dependents, 70% of wages

(b – e repealed, P.L. 2003, c. 253)

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<sup>2</sup> N.J.S.A. §§ 34:15-12.1 to 34:15-12.6.

<sup>3</sup> 34:15-7 et seq.

f. The term “dependents” shall apply to and include any or all of the following who are dependent upon the deceased at the time of accident or the occurrence of occupational disease, or at the time of death, namely: husband, wife, parent, stepparents, grandparents, children, stepchildren, grandchildren, child in esse, posthumous child, illegitimate children, brothers, sisters, half brothers, half sisters, niece, nephew. Legally adopted children shall, in every particular, be considered as natural children. Dependency shall be conclusively presumed as to the decedent’s spouse and to any natural child of a decedent under 18 years of age or, if enrolled as a full-time student, under 23 years of age, who was actually a part of the decedent’s household at the time of the decedent’s death. Every provision of this article applying to one class shall be equally applicable to the other. Should any dependent of a deceased employee die during the period covered by such weekly payments the right of such dependent to compensation under this section shall cease, but should the surviving spouse of a deceased employee remarry during such period and before the total compensation is paid, the spouse shall be entitled to receive the remainder of the compensation which would have been due the spouse had the spouse not remarried, or 100 times the amount of weekly compensation paid immediately preceding the remarriage, whichever is the lesser. The foregoing schedule applies only to persons wholly dependent, and in the case of persons only partially dependent, except in the case of the surviving spouse and children who were actually a part of the decedent’s household at the time of death, the compensation shall be such proportion of the scheduled percentage as the amounts actually contributed to them by the deceased for their support constituted of his total wages and the provision as to a minimum of 20% of the average weekly wage as set forth in subsection a. of R.S. 34:15-12 shall not apply to such compensation. In determining the number of dependents, where the deceased employee was a minor, the number of persons dependent upon the deceased employee shall be determined in the same way as if the deceased employee were an adult, notwithstanding any rule of law as to the person entitled to a minor’s wages.

g. Compensation shall be computed upon the foregoing basis. Distribution shall be made among dependents, if more than one, according to the order of the Division of Workers’ Compensation, which shall, when applied to for that purpose, determine, upon the facts being presented to it, the proportion to be paid to or on behalf of each dependent according to the relative-dependency. Payment on behalf of infants shall be made to the surviving parent, if any, or to the statutory or testamentary guardian.

h. If death results from the accident or occupational disease, whether there be dependents or not, expenses of the last sickness of the deceased employee shall be paid in accordance with the provisions for medical and hospital service as set forth in R.S. 34:15-15. In addition, the cost of burial and of a funeral, not to exceed \$3,500 shall be paid to the dependent or other person having paid the costs of burial and the funeral. In the event that the dependent or other person has paid less than \$3,500 for the costs of burial and the funeral, the dependent or other person shall be reimbursed in the amount paid and, if the costs of burial and the funeral exceed the amount so paid, the difference between the said amount and \$3,500 or so much thereof as may be necessary to pay the cost of burial and the funeral, shall be paid to the undertaker or embalmer or the dependent or other person having paid the costs of burial and the funeral.

In the event that no part of the costs of burial and the funeral have been paid, the amount of such cost of burial and the funeral, not to exceed \$3,500, shall be paid to the undertaker or embalmer or the dependent or other person who is to pay the costs of burial and the funeral.

i. In computing compensation to those named in this section, except husband, wife, parents and stepparents, and except as otherwise provided in this section, only those under 18 or over 40 years of age shall be included and then only for that period in which they are under 18 or over 40; provided, however, that payments to such physically or mentally deficient persons as are for such reason dependent shall be made during the full compensation period of 450 weeks.

j. The maximum compensation in case of death shall be subject to the maximum compensation as stated in subsection a. of R.S. 34:15-12 and a minimum of 20% of average weekly wages per week as set forth in subsection a. of R.S. 34:15-12, except in the case of partial dependency as provided in this section. This compensation shall be paid, in the case of a surviving spouse, during the entire period of survivorship or until such surviving spouse shall remarry and, in the case of other dependents, during 450 weeks and if at the expiration of 450 weeks there shall be one or more dependents under 18 years of age, compensation shall be continued for such dependents until they reach 18 years of age, or 23 years of age while enrolled as a full-time student, at the schedule provided under subsection a. of this section.

**34:15-14. Waiting period.** Except as provided pursuant to R.S. 34:15-75, no compensation other than medical aid shall accrue and be payable until the employee has been disabled 7 days, whether the days of disability immediately follow the accident, or whether they be consecutive or not. These days shall be termed the waiting period. The day that the employee is unable to continue at work by reason of his accident, whether it be the day of the accident or later, shall count as one whole day of the waiting period. Should the total period of disability extend beyond 7 days, additional compensation shall at once become payable covering the above prescribed waiting period.

**34:15-15. Medical and hospital service.** The employer shall furnish to the injured worker such medical, surgical and other treatment, and hospital service as shall be necessary to cure and relieve the worker of the effects of the injury and to restore the functions of the injured member or organ where such restoration is possible; provided, however, that the employer shall not be liable to furnish or pay for physicians' or surgeons' services in excess of \$50.00 and in addition to furnish hospital service in excess of \$50.00, unless the injured worker or the worker's physician who provides treatment, or any other person on the worker's behalf, shall file a petition with the Division of Workers' Compensation stating the need for physicians' or surgeons' services in excess of \$50.00, as aforesaid, and such hospital service or appliances in excess of \$50.00, as aforesaid, and the Division of Workers' Compensation after investigating the need of the same and giving the employer an opportunity to be heard, shall determine that such physicians' and surgeons' treatment and hospital services are or were necessary, and that the fees for the same are reasonable and shall make an order requiring the employer to pay for or furnish the same. The mere furnishing of medical

treatment or the payment thereof by the employer shall not be construed to be an admission of liability.

If the employer shall refuse or neglect to comply with the foregoing provisions of this section, the employee may secure such treatment and services as may be necessary and as may come within the terms of this section, and the employer shall be liable to pay therefore; provided, however, that the employer shall not be liable for any amount expended by the employee or by any third person on the employee's behalf for any such physicians' treatment and hospital services, unless such employee or any person on the employee's behalf shall have requested the employer to furnish the same and the employer shall have refused or neglected so to do, or unless the nature of the injury required such services, and the employer or the superintendent or foreman of the employer, having knowledge of such injury shall have neglected to provide the same, or unless the injury occurred under such conditions as make impossible the notification of the employer, or unless the circumstances are so peculiar as shall justify, in the opinion of the Division of Workers' Compensation, the expenditures assumed by the employee for such physicians' treatment and hospital services, apparatus and appliances.

All fees and other charges for such physicians' and surgeons' treatment and hospital treatment shall be reasonable and based upon the usual fees and charges which prevail in the same community for similar physicians', surgeons' and hospital services.

When an injured employee may be partially or wholly relieved of the effects of a permanent injury, by use of an artificial limb or other appliance, which phrase shall also include artificial teeth or glass eye, the Division of Workers' Compensation, acting under competent medical advice, is empowered to determine the character and nature of such limb or appliance, and to require the employer or the employer's insurance carrier to furnish the same.

**34:15-15.1. Reimbursement of insurance company or others paying medical, surgical or hospital expenses.** Whenever the expenses of medical, surgical or hospital services, to which the petitioner would be entitled to reimbursement if such petitioner had paid the same as provided in section 34:15-15 of the Revised Statutes, shall have been paid by any insurance company or other organization by virtue of any insurance policy, contract or agreement which may have been procured by or on behalf of such petitioner, or shall have been paid by any person, organization or corporation on behalf of such petitioner, the deputy directors or referees of the Division of Workmen's Compensation are authorized to incorporate in any award, order or approval of settlement, an order requiring the employer or his insurance carrier to reimburse such insurance company, corporation, person or organization in the amount of such medical, surgical or hospital services so paid on behalf of such petitioner.

**34:15-15.2. Hospital service; care required; expenses.** Whenever hospital service is required to cure or to relieve an injured workman of the effects of the injury or to restore the functions of the injured member or organ or to provide treatment for occupational disease in accordance with the provisions of the chapter hereby supplemented, the injured

rev. date January 17, 2010

workman shall be entitled to hospital service of a quality and character no less than that provided for patients receiving services known as “semi-private” room care, and shall be entitled to such nursing service as may be deemed proper by the treating physician, the expense thereof to be paid or reimbursed, in accordance with the provisions of section 34:15-15 of the Revised Statutes and chapter 207 of the laws of 1953,<sup>4</sup> by the employer. No hospital shall supply the injured workman with services of lesser quality or character than “semi-private” room care if a “semi-private” room or a “private room” is available.

**34:15-15.3 Motion by worker for emergent medical treatment.**

When through medical documentation a physician states that a worker is in need of emergent medical care that is not, following a request by the worker to the employer or the employer’s carrier, being provided or authorized by the employer, the worker may file a motion for emergent medical treatment with or after the filing of a claim petition. The physician shall further state that delay of treatment will result in irreparable harm or damage and state the specific nature of the irreparable harm or damage. The motion, to which shall be appended all medical records in possession of the moving party, shall also be served on the employer and the employer’s carrier, or their attorneys, at the time of filing. An answer to the motion shall be filed not later than five calendar days after the date of service. An initial conference on the motion shall take place within five calendar days of the filing of the answer. Thereafter the judge of compensation shall schedule the matter for a hearing in accordance with the rules adopted pursuant to section 3 of this act. The respondent shall be provided 15 calendar days from the date of service of the motion to secure a medical examination if it requires one.

L.2008, c.96, s.1.

**34:15-15.4 Designation of contact person by carrier, self-insured employer.**

Every carrier and self-insured employer shall designate a contact person who is responsible for responding to issues concerning medical and temporary disability benefits where no claim petition has been filed or where a claim petition has not been answered. The full name, telephone number, address, e-mail address, and fax number of the contact person shall be submitted to the division. Any changes in information about the contact person shall be immediately submitted to the division as they occur. After an answer is filed with the division, the attorney of record for the respondent shall act as the contact person in the case. Failure to comply with the provisions of this section shall result in a fine of \$2,500 for each day of noncompliance, payable to the Second Injury Fund.

The Commissioner of Labor and Workforce Development shall, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), adopt regulations to implement the provisions of this act.

This act shall take effect immediately.

L.2008, c.96, s.2.

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<sup>4</sup> N.J.S.A. 34:15-15.1 et seq.

**34:15-16. Compensation to run consecutively; payment for compensation, medical treatment, etc., after termination of liability.** Compensation for all classes of injuries shall run consecutively, and not concurrently, except as provided in this section and in section 34:15-15 of this Title, as follows: First, medical and hospital services and medicines as provided in said section 34:15-15. After the waiting period, compensation during temporary disability. If total period of disability extends beyond 7 days, compensation to cover waiting period. Following both, either or none of the above, compensation consecutively for each permanent injury, except that permanent disability, total or partial, shall not be determined or awarded until after 26 weeks from the date of the employee's final active medical treatment, or until after 26 weeks from the date of the employee's return to work, whichever is earlier, or, if no time is lost or no treatment is rendered, then permanent disability, total or partial, shall not be determined or awarded until after 26 weeks from the date of the accident, except in cases of amputation or enucleation or death from other cause within that time and except when earlier determination of permanent disability is waived by the employer or his insurance carrier. Nothing herein contained shall prevent an employer or his insurance carrier from paying permanent disability compensation voluntarily prior to the expiration of the 26-week period. Following any or all or none of the above, if death results from the accident, expenses of last sickness and burial. Following which compensation to dependents, if any.

Where an employer or his insurance carrier desires to pay for or furnish compensation, medical, surgical, or hospital treatment, drugs, orthopedic or prosthetic appliances, after the date when payments under sections 34:15-12 and 34:15-13 of this Title have terminated, the employer or his insurance carrier may, in writing, reserve the defense of the jurisdictional limitations provided by sections 34:15-27, 34:15-34, 34:15-41 and 34:15-51 of this Title; provided, that the reservation is approved by a deputy director after advising the petitioner personally of his rights and of the effect of such reservation.

**34:15-17. Notification of employer.** Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the employee, or some one on his behalf, or some of the dependents, or some one on their behalf, shall give notice thereof to the employer within fourteen days of the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety days, and if the employee, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of another person, or to any other reasonable cause or excuse, then compensation may be allowed, unless, and then to the extent only that the employer shall show that he was prejudiced by failure to receive such notice. Unless knowledge be obtained, or notice given, within ninety days after the occurrence of the injury, no compensation shall be allowed.

rev. date January 17, 2010

**34:15-18. Service of notice; form; sufficiency.** The notice referred to may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it through the mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

“To (name of employer):  
You are hereby notified that a personal injury was received by (name of employee injured), who was in your employ at (place) while engaged as (nature of employment), on or about the \_\_\_\_ day of \_\_\_\_\_, nineteen hundred and \_\_\_\_, and that compensation will be claimed therefor.

Signed, \_\_\_\_\_

No variation from this form shall be material if the notice is sufficient to advise the employer that a certain employee, by name, received an injury in the course of his employment on or about a specified time, at or near a certain place. Notice served at the office of, or on the person who was the employee’s immediate superior, shall be a compliance with this article.

**34:15-19. Examination of employee as to physical condition; X-rays.** After an injury, the employee, if so requested by his employer, must submit himself for physical examination and X-ray at some reasonable time and place within this state, and as often as may be reasonably requested, to a physician or physicians authorized to practice under the laws of this state. If the employee requests, he shall be entitled to have a physician or physicians of his own selection present to participate in such examination. The refusal of the employee to submit to such examination shall deprive him of the right to compensation during the continuance of such refusal. When a right to compensation is thus suspended no compensation shall be payable in respect of the period of suspension. On request, the workmen’s compensation bureau may examine the X-ray for the purpose of determining the amount of disability due, if any.

**34:15-20. Dispute; submission to division; order approving settlement.** In case of a dispute over or failure to agree upon a claim for compensation between employer and employee, or the dependents of the employee, either party may submit the claim, both as to the questions of fact, the nature and effect of the injuries, and the amount of compensation therefor according to the schedule herein provided, to the Division of Workers’ Compensation, as prescribed in article 4 of this chapter (section 34:15-49 et seq.).

After a petition for compensation or dependency claims has been filed, seeking compensation by reason of accident, injury or occupational disease of any employee, and when the petitioner is represented by an attorney of the State of New Jersey, and when it shall appear that the issue or issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner under this chapter, and the petitioner and the respondent are desirous of entering into a lump-sum settlement of the controversy, a

rev. date January 17, 2010

judge of compensation may with the consent of the parties, after considering the testimony of the petitioner and other witnesses, together with any stipulation of the parties, and after such judge of compensation has determined that such settlement is fair and just under all the circumstances, enter “an order approving settlement.” Such settlement, when so approved, notwithstanding any other provisions of this chapter, shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive upon the employee and the employee’s dependents, and shall be a complete surrender of any right to compensation or other benefits arising out of such claim under the statute. Any payments made under this section shall be recognized as payments of workers’ compensation benefits for insurance rating purposes only.

**34:15-21. Payments in case of death; to whom made; bond.** In case of death, compensation payments may be made directly to dependents of full age and on behalf of infants to the surviving parent, if any, or to the statutory or testamentary guardian of any such infant. The Division of Workers’ Compensation, on application or when a petition has been filed, may order such payments to be made to the administrator or executor of the decedent, or to such person as would be appointed administrator of the estate of the decedent, and may, if compensation is to be paid weekly, require, in the discretion of the division, the filing with the division of a bond, with satisfactory surety, to the dependents, in an amount determined by the division, for the proper application of the compensation payments. If a commutation of the award is ordered and it is impracticable to make distribution of the commuted sum among the persons entitled thereto, then the division, on making the commutation, shall require a bond, with such sureties and in such amount as will, in the judgment of the division, fully secure the persons severally entitled to portions of the commuted sum.

**34:15-22. Dispute; procedure; agreement no bar to determination on merits.** Procedure in case of dispute shall be in accordance with article four of this chapter (section 34:15-49, et seq.).

No agreement between an employee and his employer or insurance carrier for compensation shall operate as a bar to the formal determination of any controversy, unless such agreement has been approved by the commissioner, the director, a deputy director or a referee designated as a “referee, formal hearings,” in open court; provided, that after a petition has been filed and when the petitioner is represented by an attorney licensed in the State of New Jersey, and when it shall appear to the commissioner, the director, a deputy director or a referee designated as a “referee, formal hearings,” that the only issue involved is the extent of disability, the commissioner, the director, a deputy director or a referee designated as a “referee, formal hearings,” may, with the consent of the parties, after considering the sworn testimony of the petitioner and such other witnesses present, together with any stipulations of the parties, enter a determination and rule for judgment which shall include a finding of fact as to the amount of the then present disability. Such determination and rule for judgment may be reopened only in accordance with the provisions of section 34:15-27 of this Title; provided, that after a petition has been filed and when the petitioner is represented by an attorney of the State of New Jersey, and where the only issue involved is agreed by the parties to be the extent

rev. date January 17, 2010

of disability, the parties may enter into a settlement concerning the extent of disability and present such settlement to the commissioner, the director, a deputy director or a referee who, after considering the sworn testimony of the petitioner and such other witnesses present together with any stipulations of the parties and the consent of the petitioner, may enter an order approving settlement which shall include a finding that the terms of the settlement are fair and just and which order shall have the same effect as a determination and rule for judgment. Such determination and rule for judgment or order approving settlement may be reopened only in accordance with the provisions of section 34:15-27 of this Title.

**34:15-23. Refusal of medical and surgical treatment by employee.** Whenever it shall appear that an employer is being prejudiced by virtue of the refusal of an injured employee to accept proffered medical and surgical treatment deemed necessary by the physician selected by the employer, or his failure or neglect to comply with the instructions of the physician in charge of the case, the employer is hereby authorized to file a petition with the workmen's compensation bureau, which is hereby empowered to order proper medical and surgical treatment at the expense of the employer. In the event of refusal or neglect by the employee to comply with this order the bureau shall make such modification in the award contained in the schedule as the evidence produced shall justify.

**34:15-24. Payment of whole award in trust.** At any time after the entry of the award, a sum equal to all future installments of compensation may where death or the nature of the injury renders the amount of future payments certain, by leave of court, be paid by the employer to any savings bank, trust company or life insurance company in good standing and authorized, to do business in this state and having an office in the county in which the award was entered, and such sum, together with all interest thereon, shall thereafter be held in trust for the employee or the dependents of the employee, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by the receipt of the trustee noted upon the docket of the clerk of the court, shall operate as a satisfaction of said award as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same times as are herein required of the employer until the fund and interest shall be exhausted. In the appointment of the trustee, preference shall be given, in the discretion of the court, to the choice of the employee or the dependents of the deceased employee. The expense of administration of such trust shall be fixed by the court and paid by the employer.

**34:15-25. Commutation of award.** Compensation may be commuted by the bureau at its present value, when discounted at five per centum (5%) simple interest, upon application of either party, with due notice to the other, if it appears that such commutation will be for the best interest of the employees or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, or that the employee or dependent has removed or is about to remove from the United States, or that the employer has sold or otherwise disposed of the greater part of his business or assets.

Unless so approved, no compensation payments shall be commuted.

In determining whether commutation will be for the best interest of the employee or the dependents of the deceased employee, or that it will avoid undue expense or undue hardship to either party, the bureau and the Superior Court will regard the intention of this chapter that compensation payments are in lieu of wages, and are to be received by the injured employee or his dependents in the same manner in which wages are ordinarily paid. Commutation is to be allowed only when it clearly appears that an unusual circumstance warrants a departure from the normal manner of payment and not to enable the injured employee or dependents of a deceased employee to satisfy a debt, or to make payment to physicians, lawyers or others.

**34:15-26. Counsel fees.** When any proceedings have been taken under the provisions of article two of this chapter, the bureau or the Superior Court shall, as a part of the determination and order, either for payment or for commutation of payment, settle and determine the amount of compensation to be paid by the injured employee or his dependents, on behalf of whom such proceedings are instituted, to his legal advisers, and it shall be unlawful for any lawyer, or other person acting in that behalf, to ask for, contract for or receive any larger sum than the amount so fixed. In the order determining weekly payments where no commutation is made, the bureau or the court shall also determine the amount to be paid per week from the compensation payment on account of the legal fee thus awarded, and it shall be unlawful for the legal adviser, or other person acting in that behalf, to ask for, contract for or receive a larger sum per week than the allowance thus determined.

**34:15-27. Modification of agreement; review of award, determination, rule for judgment or order approving settlement.** An agreement for compensation may be modified at any time by a subsequent agreement. A formal award, determination and rule for judgment or order approving settlement may be reviewed within 2 years from the date when the injured person last received a payment upon the application of either party on the ground that the incapacity of the injured employee has subsequently increased. If any party entitled to a review under this section shall become insane within the aforesaid 2-year period, his insanity shall constitute grounds for tolling the unexpired balance of the 2-year period, which shall only begin to run again after his coming to or being of same mind. An award, determination and rule for judgment or order approving settlement may be reviewed at any time on the ground that the disability has diminished. In such case the provisions of section 34:15-19 of this Title with reference to medical examination shall apply.

**34:15-28. Interest on payments withheld.** Whenever lawful compensation shall have been withheld from an injured employee or dependents for a term of 60 or more days following entry of a judgment or order, simple interest on each weekly payment for the period of delay of each payment may, at the discretion of the division, be added to the amount due at the time of settlement. The annual rate of interest on payments withheld shall equal the average rate of return, to the nearest whole or one-half percent, for the corresponding preceding fiscal year terminating on June 30, of the State of New Jersey

rev. date January 17, 2010

Cash Management Fund (State accounts) as reported by the Division of Investment in the Department of the Treasury.

**34:15-28.1. Delay or refusal in payment of temporary disability compensation; penalty.** If a self-insured or uninsured employer or employer's insurance carrier, having actual knowledge of the occurrence of the injury, or having received notice thereof such that temporary disability compensation is due pursuant to R.S. 35:15-17, unreasonably or negligently delays or refuses to pay temporary disability compensation, or unreasonably or negligently delays denial of a claim, it shall be liable to the petitioner for an additional amount of 25% of the amounts then due plus any reasonable legal fees incurred by the petitioner as a result of and in relation to such delays or refusals. A delay of 30 days or more shall give rise to a rebuttable presumption of unreasonable and negligent conduct on the part of a self-insured or uninsured employer or an employer's insurance carrier.

**34:15-28.2 Powers of judges of compensation.**

If any employer, insurer, claimant, or counsel to the employer, insurer, or claimant, or other party to a claim for compensation, fails to comply with any order of a judge of compensation or with the requirements of any statute or regulation regarding workers' compensation, a judge of compensation may, in addition to any other remedies provided by law:

- a. Impose costs, simple interest on any moneys due, an additional assessment not to exceed 25% of moneys due for unreasonable payment delay, and reasonable legal fees, to enforce the order, statute or regulation;
- b. Impose additional fines and other penalties on parties or counsel in an amount not exceeding \$5,000 for unreasonable delay, with the proceeds of the penalties paid into the Second Injury Fund;
- c. Close proofs, dismiss a claim or suppress a defense as to any party;
- d. Exclude evidence or witnesses;
- e. Hold a separate hearing on any issue of contempt and, upon a finding of contempt by the judge of compensation, the successful party or the judge of compensation may file a motion with the Superior Court for enforcement of those contempt proceedings; and
- f. Take other actions deemed appropriate by the judge of compensation with respect to the claim.

L.2008, c.93, s.1.

**34:15-28.3 Fines, penalties, assessments, costs not included in expense base of insurer.**

Any fine, penalty, assessment, or cost, imposed on an insurer pursuant to section 1 of this act, shall not be included in the expense base of that insurer for the purpose of determining rates.

L.2008, c.93, s.2.

**34:15-28.4 Rules, regulations.**

The Commissioner of Labor and Workforce Development shall, pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations necessary to implement the provisions of this act.

This act shall take effect immediately.

L.2008, c.93, s.3.

**34:15-29. Compensation preferential lien; claim not assignable; set offs.** The right of compensation granted by this chapter shall have the same preference against the assets of the employer as is now or may hereafter be allowed by law for a claim for unpaid wages for labor. Claims or payments due under this chapter shall not be assignable, and shall be exempt from all claims of creditors and from levy, execution or attachment. The right of compensation granted by this chapter may be set off against disability pension benefits or payments but shall not be set off against employees’ retirement pension benefits or payments.

**34:15-30. Occupational disease; compensation for death or injury; exception.** When employer and employee have accepted the provisions of this article as aforesaid, compensation for personal injuries to or for death of such employee by any compensable occupational disease arising out of and in the course of his employment, as hereinafter defined, shall be made by the employer to the extent hereinafter set forth and without regard to the negligence of the employer, except that no compensation shall be payable when the injury or death by occupational disease is caused by willful self-exposure to a known hazard or by the employee’s willful failure to make use of a reasonable and proper guard or personal protective device furnished by the employer which has been clearly made a requirement of the employee’s employment by the employer and which an employer can properly document that despite repeated warnings, the employee has willfully failed to properly and effectively utilize, provided, however, this latter provision shall not apply where there is such imminent danger or need for immediate action which does not allow for appropriate use of personal protective device or devices.

**34:15-31. “Compensable occupational disease” defined.** a. For the purpose of this article, the phrase “compensable occupational disease” shall include all diseases arising out of and in the course of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment.

b. Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable.

**34:15-32. Occupational disease; determining disability and amount of compensation.** The compensation payable for death or disability total in character and permanent in quality resulting from an occupational disease shall be the same in amount and duration and shall be payable in the same manner and to the same persons as would

have been entitled thereto had the death or disability been caused by an accident arising out of and in the course of the employment.

In determining the duration of temporary and permanent partial disability, either or both, and the duration of payment for the disability due to occupational diseases, the same rules and regulations as are now applicable to accident or injury occurring under this article shall apply.

**34:15-33 (repealed, P.L. 2003, c. 253)**

**34:15-33.2. Effective date.** This act shall take effect on January first, one thousand nine hundred and forty-nine.

**34:15-33.3 Application to uninsured employer's fund for certain claims for exposure to asbestos.**

a. In the case of a claim for compensation for an occupational disease resulting in injury or death from an exposure to asbestos, if after due diligence, the standards for which shall be set forth by the Director of the Division of Workers' Compensation: (1) the workers' compensation insurer of an employer, the employer, or the principals of the employer where the claimant was last exposed cannot be located; or (2) the employee making the claim worked for more than one employer, during which time the exposure to asbestos may reasonably be deemed to have taken place but the employer or employers where the petition was last exposed cannot reasonably be identified, an application shall be made to the uninsured employer's fund, created pursuant to section 10 of P.L. 1966, c.126 (C.34:15-120.1), and any award by a judge of compensation shall be payable from the fund. For the purposes of this section "occupational disease resulting in injury or death from an exposure to asbestos" means asbestosis or any asbestos-induced cancer, including mesothelioma.

b. In the case of any claim paid by the uninsured employer's fund pursuant to this section, the fund shall have the right of subrogation against (1) any insurer or employer identified as liable as set forth under the provisions of subsection a. of this section; or (2) against the stock workers' compensation security fund, or the mutual workers' compensation security fund, if an insolvent insurer is determined to be liable; or (3) against the New Jersey Self-Insurers Guaranty Association if an insolvent self-insurer is determined to be liable.

c. The fund shall have a lien pursuant to R.S. 34:15-40 against any award received by the claimant from a third party resulting from the exposure to asbestos.

d. Compensation shall be based on the last date of exposure, if known, or if the last date of exposure cannot be known, the judge shall establish an appropriate date.

e. To ensure sufficient funding for the payment of claims under this section, the State Treasurer shall, within 30 days following the effective date of P.L. 2003, c.253 (C.34:15-33.3 et al.) and upon request of the Commissioner of Labor, transfer an amount not to exceed \$500,000 from the Second Injury Fund to the uninsured employer's fund. At the end of the first calendar quarter immediately following that effective date and at the end of each calendar quarter thereafter, the State Treasurer shall, upon request of the Commissioner of Labor, transfer from the Second Injury Fund to the uninsured

rev. date January 17, 2010

employer's fund an amount estimated by the Commissioner of Labor to be required by the uninsured employer's fund for payment of such claims for the next following calendar quarter. Amounts transferred from the Second Injury Fund under the provisions of this subsection shall be included in the determination of surcharges and assessments for the Second Injury Fund and shall be excluded from the determination of surcharges and assessments for the uninsured employer's fund.

f. The Commissioner of Labor shall, within 180 days following the effective date of P.L. 2003, c.253 (C.34:15-33.3 et al.), promulgate rules and regulations as necessary to effectuate the purposes of that act.

**34:15-34. Time for claiming compensation for occupational disease.** Notwithstanding the time limitation for the filing of claims for compensation as set forth in sections 34:15-41 and 34:15-51, or as set forth in any other section of this Title, there shall be no time limitation upon the filing of claims for compensation for compensable occupational disease, as herein above defined; provided, however, that where a claimant knew the nature of the disability and its relation to the employment, all claims for compensation for compensable occupational disease except as herein provided shall be barred unless a petition is filed in duplicate with the secretary of the division in Trenton within 2 years after the date on which the claimant first knew the nature of the disability and its relation to the employment; provided further, that in case an agreement of compensation for compensable occupational disease has been made between such employer and such claimant, then an employee's claim for compensation shall be barred unless a petition for compensation is duly filed with such secretary within 2 years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by such employer, then within 2 years after the last payment of compensation. It is the express intention of the Legislature that, except in any case where claim is made for asbestosis, radiation poisoning, siderosis, anthracosis, silicosis, mercury poisoning, beryllium poisoning, chrome poisoning, lead poisoning or any occupational disease having the same characteristics of the above enumerated diseases as subsequently determined by the National Institute for Occupational Safety and Health, the provisions of this section shall not be applied retroactively but shall be applied only to those employees who shall cease to have been exposed in the course of employment to causes of compensable occupational diseases as defined in 34:15-31(a) subsequent to January 1, 1980.

A payment or agreement to pay by the insurance carrier shall, for the purpose of this section, be deemed a payment or agreement by the employer.

**34:15-35. Provisions applicable to occupational diseases; claim for accident excluded.** All provisions of this article and article 3 of this title (§ 34:15-36 et seq.), applicable to claims for injury or death by accident, shall apply to injury or death by compensable occupational disease, except to the extent that they are inconsistent with the provisions contained in sections 34:15-30 to 34:15-34 of this title. The provisions in said sections 34:15-30 to 34:15-34 shall not apply to any claim for compensation for injury resulting from accident.

**34:15-35.10. Occupational hearing loss.** Compensation for noise induced occupational loss of hearing which constitutes an occupational disease shall be paid only as provided in this act. All provisions of chapter 15 of Title 34 of the Revised Statutes applicable to claims for injury by accident, shall apply to compensable occupational hearing loss, except to the extent that they are inconsistent with the provisions of this act.

**34:15-35.11. Definitions.** As used in this act:

a. “Noise induced occupational hearing loss” means a permanent bilateral loss of hearing acuity of the sensorineural type due to prolonged, habitual exposure to hazardous noise in employment. For purposes of this supplementary act, sudden hearing loss resulting from a single, short noise exposure, such as an explosion, shall not be considered an occupational disease but shall be considered as an injury by accident. Exceptional cases of sensorineural hearing loss can be considered occupational hearing loss provided it can be established that the cause was short term exposures to high intensity noise levels.

b. “Sensorineural hearing loss” means a loss of hearing acuity due to damage to the inner ear which can result from numerous causes, as distinguished from conductive hearing loss which results from disease or injury involving the middle ear or outer ear or both and which is not caused by prolonged exposure to noise.

c. “Prolonged exposure” means exposure to hazardous noise in employment for a period of at least 1 year.

d. “Habitual exposure” means exposure to noise exceeding the allowable daily dose, at least 3 days each week, for at least 40 weeks each year.

e. “Hazardous noise” means noise which exceeds the permissible daily exposure to the corresponding noise level as shown in the following table:

<u>Noise Level (dBA)</u>	<u>Permissible Daily Exposure</u>
90	8 hours
95	4 hours
100	2 hours
105	1 hour
110	30 minutes
115	15 minutes

f. “Hearing threshold level” means the lowest decibel sound which may be heard on the audiometer 50% of the times presented during audiometric testing.

**34:15-35.12. Degree of hearing loss; determination of degree.** a. For purposes of determining the degree of hearing loss for awarding compensation for noise induced occupational hearing loss, the average hearing threshold for each ear shall be determined by adding the hearing thresholds (ANSI) for the three frequencies 1,000, 2,000 and 3,000 Hertz and dividing that sum by three. To determine the binaural disability, subtract the 30dB (low fence) from the obtained average in each ear. This decibel amount is then multiplied by 1.5% for each ear. Then multiply the smaller percentage (the better ear) by 5 and add the larger number (the poorer ear) and divide the resulting number by 6. This

resulting number is the percentage of binaural hearing disability to be used pursuant to the provisions of section 9 of this act.

b. If the better ear has a hearing loss of 30 dB or less as measured from 0 dB on an audiometer calibrated to ANSI S3.6-1969 American National Standard "Specifications for Audiometers," or 20 dB or less as measured on an audiometer calibrated to ASA-Z 24.5-1951 "American Standard Specifications for Pure-Tone Audiometers for Screening Purposes," the hearing loss shall not be compensable. If the audiogram is performed on an ASA calibrated audiometer, the hearing threshold level must be converted to ANSI calibration levels.

**34:15-35.13. Liability for hearing loss; previous hearing loss; audiometric testing.**

a. Where hearing loss measurement is practicable, an employer shall be liable for the hearing loss of an employee to which his employment has contributed. If previous occupational hearing loss or hearing loss from non-occupational causes is established by competent evidence, including the results of a placement audiogram, the employer shall not be liable for the hearing loss so established whether or not compensation has previously been paid or awarded, and shall be liable only for the difference between the percentage of disability determined as of the date of disability, as herein defined and the percentage of disability established by the placement audiogram.

b. An employer may require an employee to undergo audiometric testing at the expense of the employer at the time of termination of employment. The employer shall be required to notify the employee, in writing, of this requirement and the penalty, as provided herein, for noncompliance with such requirement at or before the employee's termination date. In the event of refusal or failure by the employee to undergo audiometric testing within 60 days after receipt of written notice of the scheduling of such test by the employer, the employee shall be penalized by losing any right to compensation as granted by this act, unless such failure is due to a legitimate reason as determined by the division.

c. Any employee who undergoes audiometric testing at the direction of an employer may request, within two weeks of such testing, a copy and brief explanation of the results which shall be provided to him within two weeks of said request.

d. For purposes of verifying the degree of hearing loss for awarding compensation, an employee may introduce audiometric test results obtained within 30 days after employer testing at his own expense from any individual approved for performing hearing tests pursuant to section 7.

**34:15-35.14. Administration of testing; fraud.** A judge or referee of compensation shall have the discretion to order further audiometric testing if there is any suspicion of fraud or any question of reliability in the administration of the testing provided for by sections 3 and 4 of this act.<sup>5</sup>

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<sup>5</sup> N.J.S.A. §§ 34:15-35.12 and 34:15-35.13

**34:15-35.15. Frequencies; evaluation of hearing loss.** In any evaluation of occupational hearing loss, only hearing levels at frequencies of 1,000, 2,000, and 3,000 Hertz shall be considered.

**34:15-35.16. Hearing tests; instruments; test conditions.** Hearing levels shall be determined at all times by using puretone air-conduction audiometric instruments calibrated in accordance with American National Standard ANSI S3.6-1969-R 1973 and ANSI S3.13-1972 and performed in an environment as prescribed by American National Standard S3.1-1960 R 1971 (American Standard Criteria for Background Noise in Audiometer Rooms). To measure permanent hearing loss, hearing tests shall be performed after at least 16 hours absence from exposure to hazardous noise. The calibration of an audiometric instrument used to measure permanent hearing loss shall have been performed within 1 year of the time of the hearing examination, to assure that the audiometer is within the tolerances permitted by the ANSI standards.

**34:15-35.17. Audiometric technician to perform hearing test; audiologic evaluation.** All hearing tests shall be performed by a person at the level of a certified audiometric technician or above; an individual who meets the training requirements specified by the Intersociety Committee on Audiometric Technician Training (American Industrial Hygiene Association Journal 27:303-304, May-June 1966) and the State Department of Health.

If hearing loss is demonstrated, an employee shall be referred for audiologic evaluation by a certified audiologist holding a certificate of clinical competence issued by the American Speech and Hearing Association or its equivalent or a physician certified by the American Board of Otolaryngology.

**34:15-35.18. Compensation amount.** There shall be payable for total hearing loss 200 weeks of compensation. Partial disability compensation shall be paid for such periods as are proportionate to the relation which the calculated percentage loss bears to 100% hearing loss and shall be paid at the weekly compensation rate provided in R.S. 34:15-12c. or any amendments thereto.

**34:15-35.19. Filing claims; time limitations.** Time limitations for the filing of claims for compensation for occupational hearing loss shall be in accordance with time limitations for the filing of claims for compensation for compensable occupational disease set forth in 35:15-34.

**34:15-35.20. Time for filing claims; date of disability.** No claims for compensation for occupational hearing loss shall be filed until after 4 full consecutive calendar weeks have elapsed since removal from exposure to hazardous noise in employment. Removal from exposure to hazardous noise in employment may be achieved by use of effective ear protection devices. The last day of such exposure shall be the date of disability.

**34:15-35.21. Award; use of hearing aids.** No reduction in award for hearing loss shall be made if the ability of the employee to understand speech is improved by the use of a hearing aid.

**34:15-35.22. Failure to use protective devices, compensation for hearing loss.** No compensation shall be payable for loss of hearing caused by hazardous noise after the effective date of this act if an employer can properly document that despite repeated warnings, an employee willfully fails to properly and effectively utilize suitable protective device or devices provided by the employer capable of diminishing loss of hearing due to occupational exposure to hazardous noise.

### Article 3. DEFINITIONS AND GENERAL PROVISIONS

**34:15-36 Definitions.** “Willful negligence” within the intent of this chapter shall consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as evidences reckless indifference to safety, or (3) intoxication, operating as the proximate cause of injury, or (4) unlawful use of a controlled dangerous substance as defined in the “New Jersey Controlled Dangerous Substances Act,” P.L. 1970, c.226 (C.24:21-1 et seq.).

“Employer” is declared to be synonymous with master, and includes natural persons, partnerships, and corporations; “employee” is synonymous with servant, and includes all natural persons, including officers of corporations, who perform service for an employer for financial consideration, exclusive of (1) employees eligible under the federal “Longshore and Harbor Workers’ Compensation Act,” 44 Stat. 1424 (33 U.S.C.s.901 et seq.), for benefits payable with respect to accidental death or injury, or occupational disease or infection; and (2) casual employments, which shall be defined, if in connection with the employer’s business, as employment the occasion for which arises by chance or is purely accidental, or if not in connection with any business of the employer, as employment not regular, periodic or recurring; provided, however, that forest fire wardens and forest firefighters employed by the State of New Jersey shall, in no event, be deemed casual employees.

A self-employed person, partners of a limited liability partnership, members of a limited liability company or partners of a partnership who actively perform services on behalf of the self-employed person’s business, the limited liability partnership, limited liability company or the partnership shall be deemed an “employee” of the business, limited liability partnership, limited liability company or partnership for purposes of receipt of benefits and payment of premiums pursuant to this chapter, if the business, limited liability partnership, limited liability company or partnership elects, when the workers’ compensation policy of the business, limited liability partnership, limited liability company or partnership is purchased or renewed, to obtain coverage for the person, the limited liability partners, the limited liability company members or the partners. If the business, limited liability partnership, limited liability company or partnership elects to obtain coverage for the self-employed person, limited liability partners, limited liability company members or the partners the election may only be made at purchase or at renewal and may not be withdrawn during the policy term. If the business, limited liability partnership, limited liability company or partnership performs services covered under a homeowner’s policy or other policies providing comprehensive personal liability insurance for domestic servants, household employees or the dependents thereof, the workers’ compensation policy of the business, limited liability partnership, limited liability company or partnership shall have primary responsibility for the payment of benefits. Notwithstanding the provisions of R.S. 34:15-71 and 34:15-72 the business, limited liability partnership, limited liability company or partnership shall not be required to purchase a policy unless the business, limited liability partnership, limited liability company or partnership is an “employer” of at least one employee as defined in this section who is not a self-employed person, limited liability partner, limited liability

company member or partner actively performing services on behalf of the business, limited liability partnership, limited liability company or partnership.

Notwithstanding any other provision of law to the contrary, no insurer or insurance producer as defined in section 2 of P.L. 1987, c. 293 (C.17:22A-2) shall be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. Every application for workers' compensation made on or after the effective date of this amendatory act shall include notice, as approved by the Commissioner of Banking and Insurance, concerning the availability of workers' compensation coverage for self-employed persons, limited liability partners, limited liability company members or partners. That application shall also contain a notice of election of coverage and shall clearly state that coverage for self-employed persons, limited liability partners, limited liability company members and partners shall not be provided under the policy unless the application containing the notice of election is executed and filed with the insurer or insurance producer. The application containing the notice of election shall also contain a statement that the insurer or insurance producer shall not be liable in an action for damages on account of the failure of a business, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for a self-employed person, limited liability partner, limited liability company member or partner, unless the insurer or insurance producer causes damage by a willful, wanton or grossly negligent act of commission or omission. The failure of a self-employed person, limited liability partnership, limited liability company or partnership to elect to obtain workers' compensation coverage for the self-employed person, the limited liability partners, the limited liability company members or the partners shall not affect benefits available under any other accident or health policy.

Employment shall be deemed to commence when an employee arrives at the employer's place of employment to report for work and shall terminate when the employee leaves the employer's place of employment, excluding areas not under the control of the employer; provided, however, when the employee is required by the employer to be away from the employer's place of employment, the employee shall be deemed to be in the course of employment when the employee is engaged in the direct performance of duties assigned or directed by the employer; but the employment of employee paid travel time by an employer for time spent traveling to and from a job site or of any employee who utilized an employer authorized vehicle shall commence and terminate with the time spent traveling to and from a job site or the authorized operation of a vehicle on business authorized by the employer. Travel by a policeman, fireman, or a member of a first aid or rescue squad, in responding to and returning from an emergency, shall be deemed to be in the course of employment.

Employment shall also be deemed to commence when an employee is traveling in a ridesharing arrangement between his or her place of residence or terminal near such place

rev. date January 17, 2010

and his or her place of employment, if one of the following conditions is satisfied: the vehicle used in the ridesharing arrangement is owned, leased or contracted for by the employer, or the employee is required by the employer to travel in a ridesharing arrangement as a condition of employment.

“Disability permanent in quality and partial in character” means a permanent impairment caused by a compensable accident or compensable occupational disease, based upon demonstrable objective medical evidence, which restricts the function of the body or of its members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee’s working ability. Subject to the above provisions, nothing in this definition shall be construed to preclude benefits to a worker who returns to work following a compensable accident even if there be no reduction in earnings. Injuries such as minor lacerations, minor contusions, minor sprains, and scars which do not constitute significant permanent disfigurement, and occupational disease of a minor nature such as mild dermatitis and mild bronchitis shall not constitute permanent disability within the meaning of this definition.

“Disability permanent in quality and total in character” means a physical or neuropsychiatric total permanent impairment caused by a compensable accident or compensable occupational disease, where no fundamental or marked improvement in such condition can be reasonable expected.

Factors other than physical and neuropsychiatric impairments may be considered in the determination of permanent total disability, where such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability.

“Ridesharing” means the transportation of persons in a motor vehicle, with a maximum carrying capacity of not more than 15 passengers, including the driver, where such transportation is incidental to the purpose of the driver. This term shall include such ridesharing arrangements known as carpools and vanpools.

“Medical services, medical treatment, physicians’ services and physicians’ treatment” shall include, but not be limited to, the services which a chiropractor is authorized by law to perform and which are authorized by an employer pursuant to the provisions of R.S.34:15-1 et seq.

(cf: P.L. 1994,c.74,s.1)

This act shall take effect on the 90<sup>th</sup> day following enactment and apply to all policies issued on or after that date.

**34:15-37 Wages; computation.** “Wages,” when used in this chapter shall be construed to mean the money rate at which the service rendered is recompensed under the contract of hiring in force at the time of the accident. Board and lodging when furnished by the employer as part of the wages shall be included and valued at \$25.00 per week, unless the money value of such advantages shall have been otherwise fixed by the parties of the time of hiring. Where prior to the accident, the rate of wages is fixed by the output of the

rev. date January 17, 2010

employee, the daily wages shall be calculated by dividing the number of days the worker was actually employed into the total amount the employee earned during the preceding 6 months, or so much thereof as shall refer to employment by the same employer. When the rate of wages is fixed by the hour, the daily wage shall be found by multiplying the hourly rate by the customary number of working hours constituting an ordinary day in the character of the work involved. In any case, the weekly wage shall be found by multiplying the daily wage by the customary number or working days constituting an ordinary week in the character of the work involved; provided, however, if the employee worked less than the customary number of working days constituting an ordinary week in the character of the work involved, the weekly wage for the purposes of compensation under provisions of R.S.34:15-12a only shall be found by multiplying the hourly rate by the number of hours work regularly performed by that employee in the character of the work involved.

Gratuities, received regularly in the course of employment from other than the employer, shall be included in determining the weekly wage only in those cases where the employer or employee has kept a regular daily or weekly record of the amount of gratuities so received. In such cases the average weekly amount of gratuities over a period of 6 months, or for the entire time of employment, whichever period is less, shall be added to the fixed weekly wage to determine the employee's total weekly wage. If no such record has been kept, then the average amount of the weekly gratuities shall be fixed by the judge of compensation or the referee hearing the matter.

**34:15-38. Method of calculating compensation for temporary disability.** To calculate the number of weeks and fraction thereof that compensation is payable for temporary disability, determine the number of calendar days of disability from and including as a full day the day that the employee is first unable to continue at work by reason of the accident, including also Saturdays, Sundays and holidays, up to the first working day that the employee is able to resume work and continue permanently thereat; subtract from this number the waiting period and any days and fraction thereof the employee was able to work during this time, and divide the remainder by 7. If, however, the total period of disability extends beyond 7 days, the waiting period shall not be subtracted from the number indicated above. The resulting whole number and sevenths will be the required period for which compensation is payable on account of temporary disability.

**34:15-39. Agreements and releases invalid.** No agreement, composition, or release of damages made before the happening of any accident, except the agreement defined in section 34:15-7 of this title shall be valid or shall bar a claim for damages for the injury resulting therefrom, and any such agreement is declared to be against public policy. The receipt of benefits from any association, society, or fund to which the employee shall have been a contributor shall not bar the recovery of damages by action at law or the recovery of compensation under article 2 of this chapter (§ 34:15-7 et seq.).

**34:15-39.1. Unlawful discharge of, or discrimination against, employee claiming compensation benefits; penalty.** It shall be unlawful for any employer or his duly authorized agent to discharge or in any other manner discriminate against an employee as to his employment because such employee has claimed or attempted to claim workmen's

rev. date January 17, 2010

compensation benefits from such employer, or because he has testified, or is about to testify, in any proceeding under the chapter to which this act is a supplement. For any violation of this act, the employer or agent shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 or imprisonment for not more than 60 days or both. Any employee so discriminated against shall be restored to his employment and shall be compensated by his employer for any loss of wages arising out of such discrimination; provided, if such employee shall cease to be qualified to perform the duties of his employment he shall not be entitled to such restoration and compensation.

**34:15-39.2. Additional penalty; summary recovery.** As an alternative to any other sanctions herein or otherwise provided by law, the Commissioner of Labor and Industry may impose a penalty not exceeding \$1,000.00 for any violation of this act. He may proceed in a summary manner for the recovery of such penalty, for the use of the State in any court of competent jurisdiction.

**34:15-39.3. Liability of employer for penalty.** The employer alone and not his insurance carrier shall be liable for any penalty under this act.

**34:15-40. Liability of third party.** Where a third person is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer or insurance carrier under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. In the event that the employee or his dependents shall recover and be paid from the said third person or his insurance carrier, any sum in release or in judgment on account of his or its liability to the injured employee or his dependents, the liability of the employer under this statute thereupon shall be only such as is hereinafter in this section provided.

(a) The obligation of the employer or his insurance carrier under this statute to make compensation payments shall continue until the payment, if any, by such third person or his insurance carrier is made.

(b) If the sum recovered by the employee or his dependents from the third person or his insurance carrier is equivalent to or greater than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be released from such liability and shall be entitled to be reimbursed, as hereinafter provided, for the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents less employee's expenses of suit and attorney's fee as hereinafter defined.

(c) If the sum recovered by the employee or his dependents as aforesaid is less than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be liable for the difference, plus the employee's expenses of suit and attorney's fee as hereinafter defined, and shall be entitled to be reimbursed, as hereinafter provided for so much of the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents as exceeds the amount of such difference plus such employee's expenses of suit and attorney's fee.

(d) If at any time prior to the payment by the third person or his insurance carrier to the injured employee or his dependents, the employer or his insurance carrier shall

rev. date January 17, 2010

serve notice, as hereinafter provided, upon such third person or his insurance carrier that compensation has been applied for by the injured employee or his dependents it shall thereupon become the duty of such third person or his insurance carrier, before making any payment to the injured employee or his dependents, to inquire from such employer or his insurance carrier the amount of medical expenses incurred and compensation theretofore paid to the injured employee or to his dependents. Where such notice shall have been served, it shall further become the duty of such third person or his insurance carrier, before making any payment as aforesaid, to inquire from such injured employee or his dependents the amount of the expenses of suit and attorney's fee, or either of them in the action or settlement of the claim against such third person or his insurance carrier.

Thereafter, out of that part of any amount about to be paid in release or in judgment by such third person or his insurance carrier on account of his or its liability to the injured employee or his dependents, the employer or his insurance carrier shall be entitled to receive from such third person or his insurance carrier so much thereof as may be due the employer or insurance carrier pursuant to subparagraph (b) or (c) of this section. Such sum shall be deducted by such third person or his insurance carrier from the sum to be paid in release or in judgment to the injured employee or his dependents and shall be paid by such third person or his insurance carrier to the employer or his insurance carrier. Service of notice, hereinbefore required to be made by the employer or his insurance carrier upon such third person or his insurance carrier, shall be by registered mail, return receipt and in cases other than an individual shall be mailed to the registered office of such other third person or his insurance carrier.

(e) As used in this section, "expenses of suit" shall mean such expenses, but not in excess of \$750, and "attorney's fee" shall mean such fee, but not in excess of 33 1/3 % of that part of the sum paid in release or in judgment to the injured employee or his dependents by such third person or his insurance carrier to which the employer or his insurance carrier shall be entitled in reimbursement under the provisions of this section, but on all sums in excess thereof, this percentage shall not be binding.

(f) When an injured employee or his dependents fail within one year of the accident to either effect a settlement with the third person or his insurance carrier or institute proceedings for recovery of damages for his injuries and loss against the third person, the employer or his insurance carrier, 10 days after a written demand on the injured employee or his dependents, can either effect a settlement with the third person or his insurance carrier or institute proceedings against the third person for the recovery of damages for the injuries and loss sustained by such injured employee or his dependents and any settlement made with the third person or his insurance carrier or proceedings had and taken by such employer or his insurance carrier against such third person, and such right of action shall be only for such right of action that the injured employee or his dependents would have had against the third person, and shall constitute a bar to any further claim or action by the injured employee or his dependents against the third person. If a settlement is effected between the employer or his insurance carrier and the third person or his insurance carrier, or a judgment is recovered by the employer or his insurance carrier against the third person for the injuries and loss sustained by the employee or his dependents and if the amount secured or obtained by the employer or his insurance carrier is in excess of the employer's obligation to the employee or his

rev. date January 17, 2010

dependents and the expense of suit, such excess shall be paid to the employee or his dependents. The legal action contemplated herein above shall be a civil action at law in the name of the injured employee or by the employer or insurance carrier in the name of the employee to the use of the employer or insurance carrier, or by the proper party for the benefit of the next of kin of the employee. Where an injured employee or his dependents have instituted proceedings for recovery of damages for his injuries and loss against a third person and such proceedings are dismissed for lack of prosecution, the employer or insurance carrier shall, upon application made within 90 days thereafter, be entitled to have such dismissal set aside, and to continue the prosecution of such proceedings in the name of the injured employee or dependents in accordance with the provisions of this section.

(g) If such employee or his dependents effect a settlement with the third person or his insurance carrier or institute proceedings against the third person prior to the service of notice upon the third person or his insurance carrier of the compensation obligation of the employer or his insurance carrier or prior to the institution of any proceedings against the third person by the employer or his insurance carrier for the injuries and loss sustained by such employee or his dependents, such employer or his insurance carrier is barred from instituting any action or proceedings against the third person for the injuries and loss sustained by such employee or his dependents.

The words "third person" as used in this section include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals.

**34:15-41. Claims barred after two years.** In case of personal injury or death all claims for compensation on account thereof shall be forever barred unless a petition is filed in duplicate with the secretary of the workmen's compensation bureau, as prescribed by section 34:15-51 of this title.

**34:15-41.1. Claimant in country at war with United States or with which postal communications are suspended; limitations.** In computing any limitation of time for filing petitions and instituting proceedings prescribed by chapter fifteen of Title 34 of the Revised Statutes, the time during which any claimant is in a foreign country, while the government of or in control of said country is at war with the Government of the United States or while postal communications between said country and the United States are suspended, and twelve months thereafter shall not be computed as part of any such period of limitation.

**34:15-42. Constitutionality and construction.** Article 1 of this chapter (§ 34:15-1 et seq.), and article 2 of this chapter (§ 34:15-7 et seq.), are declared to be inseparable and if either be declared void or inoperative in an essential part so that the whole of such article must fall, the other article shall fall with it and not stand alone.

Article 1 of this chapter (§ 34:15-1 et seq.) shall not apply in cases where article 2 of this chapter (§ 34:15-7 et seq.) becomes operative but shall apply in all other cases and in such cases shall be in extension of the common law.

**34:15-43. Compensation for injury in line of duty**

Every officer, appointed or elected, and every employee of the State, county, municipality or any board or commission, or any other governing body, including boards of education, and governing bodies of service districts, individuals who are under the general supervision of the Palisades Interstate Park Commission and who work in that part of the Palisades Interstate Park which is located in this State, and also each and every member of a volunteer fire company doing public fire duty and also each and every active volunteer, first aid or rescue squad worker, including each and every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, doing public first aid or rescue duty under the control or supervision of any commission, council, or any other governing body of any municipality, any board of fire commissioners of such municipality or of any fire district within the State, or of the board of managers of any State institution, every county fire marshal and assistant county fire marshal, every special, reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, every emergency management volunteer doing emergency management service for the State and any person doing volunteer work for the Division of Parks and Forestry, the Division of Fish and Wildlife, or the New Jersey Natural Lands Trust, as authorized by the Commissioner of Environmental Protection, or for the New Jersey Historic Trust, who may be injured in line of duty shall be compensated under and by virtue of the provisions of this article and article 2 of this chapter (*R.S. 34:15-7 et seq.*). No former employee who has been retired on pension by reason of injury or disability shall be entitled under this section to compensation for such injury or disability; provided, however, that such employee, despite retirement, shall, nevertheless, be entitled to the medical, surgical and other treatment and hospital services as set forth in *R.S. 34:15-15*.

Benefits available under this section to emergency management volunteers and volunteers participating in activities of the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall not be paid to any claimant who has another single source of injury or death benefits that provides the claimant with an amount of compensation that exceeds the compensation available to the claimant under *R.S. 34:15-1 et seq.*

As used in this section, the terms "doing public fire duty" and "who may be injured in line of duty," as applied to members of volunteer fire companies, county fire marshals or assistant county fire marshals, and the term "doing public first aid or rescue duty," as applied to active volunteer first aid or rescue squad workers, shall be deemed to include participation in any authorized construction, installation, alteration, maintenance or repair work upon the premises, apparatus or other equipment owned or used by the fire company or the first aid or rescue squad, participation in any State, county, municipal or regional search and rescue task force or team, participation in any authorized public drill, showing, exhibition, fund raising activity or parade, and to include also the rendering of assistance in case of fire and, when authorized, in connection with other events affecting

rev. date January 17, 2010

the public health or safety, in any political subdivision or territory of another state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

Also, as used in this section, "doing public police duty" and "who may be injured in line of duty" as applied to special, reserve or auxiliary policemen, shall be deemed to include participation in any authorized public drill, showing, exhibition or parade, and to include also the rendering of assistance in connection with other events affecting the public health or safety in the municipality, and also, when authorized, in connection with any such events in any political subdivision or territory of this or any other state of the United States or on property ceded to the federal government while such assistance is being rendered and while going to and returning from the place in which it is rendered.

As used in this section, the terms "doing emergency management service" and "who may be injured in the line of duty" as applied to emergency management volunteers mean participation in any activities authorized pursuant to P.L. 1942, c. 251 (C. App. A:9-33 et seq.), including participation in any State, county, municipal or regional search and rescue task force or team, except that the terms shall not include activities engaged in by a member of an emergency management agency of the United States Government or of another state, whether pursuant to a mutual aid compact or otherwise.

Every member of a volunteer fire company shall be deemed to be doing public fire duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district or board of managers of any State institution within the meaning of this section, if such control or supervision is provided for by statute or by rule or regulation of the board of managers or the superintendent of such State institution, or if the fire company of which he is a member receives contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district or if such fire company has been or hereafter shall be designated by ordinance as the fire department of the municipality.

Every active volunteer, first aid or rescue squad worker, including every authorized worker who is not a member of the volunteer fire company within which the first aid or rescue squad may have been created, shall be deemed to be doing public first aid or rescue duty under the control or supervision of any such commission, council, governing body, board of fire commissioners or fire district within the meaning of this section if such control or supervision is provided for by statute, or if the first aid or rescue squad of which he is a member or authorized worker receives or is eligible to receive contributions from, or a substantial part of its expenses or equipment are paid for by, the municipality, or board of fire commissioners of the fire district, or if such first aid or rescue squad has been or hereafter shall be designated by ordinance as the first aid or rescue squad of the municipality.

As used in this section and in *R.S. 34:15-74*, the term "authorized worker" shall mean and include, in addition to an active volunteer fireman and an active volunteer first aid or rescue squad worker, any person performing any public fire duty or public first aid or rescue squad duty, as the same are defined in this section, at the request of the chief or acting chief of a fire company or the president or person in charge of a first aid or rescue squad for the time being.

A member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or of any fire district within the State, or of the board of managers of any State institution, who participated in a search and rescue task force or team in response to the terrorist attacks of September 11, 2001 without the authorization of that volunteer organization's governing body and who suffered injury or death as a result of participation in that search and rescue task force or team shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Whenever a member of a volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer serving a volunteer organization duly created and under the control or supervision of any commission, council or any other governing body of any municipality, any board of fire commissioners of that municipality or of any fire district within the State, or of the board of managers of any State institution, participates in a national, multi-state, State, municipal or regional search and rescue task force or team without the authorization of that volunteer organization's governing body but pursuant to a Declaration of Emergency by the Governor of the State of New Jersey specifically authorizing volunteers to respond immediately to the emergency without requiring the authorization of the volunteer company or squad, and the member of the volunteer fire company, active volunteer first aid or rescue squad worker, county fire marshal, assistant county fire marshal, special, reserve or auxiliary policeman or emergency management volunteer suffers injury or death as a result of participation in that search and rescue task force or team, he shall be deemed an employee of this State for the purpose of workers' compensation benefits as would have accrued if the injury or death had occurred in the performance of the duties of the volunteer company or squad of which he was a member.

Nothing herein contained shall be construed as affecting or changing in any way the provisions of any statute providing for sick, disability, vacation or other leave for public employees or any provision of any retirement or pension fund provided by law.

**34:15-43.1. Public employment under plan of relief “casual employment.”**

“Repealed By P.L. 1997, c38, p.11 Repealer”

**34:15-43.2. Volunteer fire department members; respiratory diseases; presumption of occupational disease.** Any condition or impairment of health of any member of a volunteer fire department caused by any disease of the respiratory system shall be held and presumed to be an occupational disease unless the contrary be made to appear in rebuttal by satisfactory proof; providing

(a) Such disease develops or first manifests itself during a period while such member is an active member of such department; and

(b) Said member, upon entering said volunteer fire service, has or shall have undergone a medical examination, which examination failed or fails to disclose the presence of such disease or diseases; and

(c) Such disease develops or first manifests itself within 90 days from the event medically determined to be the cause thereof.

Any present member who did not undergo a medical examination upon entering said volunteer fire service, may undergo such examination within 180 days after the effective date of this act and in the event such examination does not disclose the presence of such disease or diseases, he shall thereafter be entitled to the benefits of this act.

**34:15-43.3. Time of development or first manifestation of respiratory disease.** For the purposes herein expressed, the time of development or first manifestation of such disease or diseases shall only be determined by and run from the date of first notice of the existence of such disease or diseases to such member by a physician, or the date of death as a result of such disease or diseases.

**34:15-43.4. Park volunteers; eligibility for compensation for injury, death or both.** A person participating under the supervision of the Palisades Interstate Park Commission, in a volunteer program in that part of the Palisades Interstate Park located in New Jersey, who is deemed to be an employee of this State under 32:14-4 for the purpose of receiving workers' compensation coverage, is eligible for compensation for injury or death, or both, under chapter 15 of Title 34 of the Revised Statutes, based upon a weekly salary or compensation conclusively presumed to be received by this person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation available under chapter 15 of Title 34 of the Revised Statutes.

**34:15-44. Names of public employees carried on payroll.** When any payment of compensation under this chapter shall be due to any public employee, the name of the injured employee, or in case of his death, the names of the persons to whom payment is to be made as his dependents, shall be carried upon the pay roll, and payment shall be made in the same manner and from the same source in which and from which the wages of the injured employee were paid. In event that any extraordinary payment larger than the weekly rate of compensation shall be due, such payment shall be made from any fund available for the maintenance or incidental expenses of the institution, department, board or governing body under and by which the employee was employed.

**34:15-45. Guardian's compromise of claim.** In any case where a person under the age of twenty-one years shall be entitled to receive any compensation or distributive share under this chapter any duly authorized guardian of the person and property of such person appointed by the surrogate or by the Superior Court, shall be authorized and empowered to act for such person to the same extent as a duly appointed guardian ad litem appointed by any court of this State and shall have the right and authority to compromise and make composition in behalf of such person of any disputed claim for compensation arising

rev. date January 17, 2010

under this chapter; provided the terms of such compromise or composition shall be approved by an order of the Division of Workers' Compensation upon presentation of the facts and terms thereof to the Division, before the same shall become effective.

**34:15-46. Parent to act as guardian; release a complete discharge.** In case a person under the age of twenty-one years shall be entitled to receive a sum or sums amounting, in the aggregate, to not more than two hundred fifty dollars (\$250.00) as compensation for injuries, or as a distributive share under this chapter, the father, mother or natural guardian upon whom said person shall be dependent for support shall be authorized and empowered to receive and receipt for such moneys to the same extent as a guardian of the person and property of such person duly appointed by the surrogate of the county in which such person resides or by the Superior Court. The release or discharge of such father, mother or natural guardian shall be a full and complete discharge of all claims or demands of the said person thereunder.

**34:15-47. Blank.**

**34:15-48. Representative appointed for compensation beneficiary.** The commissioner and each deputy commissioner of compensation is hereby authorized and empowered when in his judgment it shall be advisable, to appoint a representative with power to act for a person who may be entitled to compensation, by legally receiving and disbursing said compensation under the direction of the commissioner or any deputy commissioner of compensation, when it shall appear that such person is mentally, legally or physically unable to properly receive or disburse said compensation, or when said person, after due diligence, cannot be located. Whenever the person entitled to compensation is a minor child, and the commissioner or any deputy commissioner of compensation shall determine that there is no proper person available to receive and disburse said compensation for such child, then the State Board of Children's Guardians, as constituted by the provisions of chapter five, of Title Institutions and Agencies (§ 30:5-1 et seq.), may be appointed as the representative of such minor child.

#### **Article 4. CLAIMS AND DETERMINATION THEREOF**

**34:15-49. Original jurisdiction of claims; salaries of director and judges, qualifications of judges.** a. The Division of Workers' Compensation shall have the exclusive original jurisdiction of all claims for workers' compensation benefits under this chapter. The judges of the Division of Workers' Compensation shall hereinafter be appointed on a bipartisan basis by the Governor, with the advice and consent of the Senate, to initial terms of three years at an annual salary, for the first year, in an amount equal to 75% of the annual salary of a Judge of the Superior Court. During the initial three-year term, each judge shall be subject to a program of evaluation developed by the director of the Division of Workers' Compensation. Upon receipt of a satisfactory annual evaluation from the director, the annual salary of a nontenured judge shall be increased to 78 2/3% of the annual salary of a Judge of the Superior Court after one year; 81 2/3% of the annual salary of a Judge of the Superior Court after two years; and, after three years and upon tenure as provided pursuant to the provisions of this section, the annual salary of a tenured judge of compensation shall be 85% of the annual salary of a Judge of the Superior Court. Reappointment of a judge shall be by the Governor, with the advice and consent of the Senate. The director's evaluations shall be made available to the Senate Judiciary Committee if the candidate has been renominated by the Governor. Upon confirmation after the initial three-year term, a judge of the Division of Workers' Compensation shall have tenure, and shall serve during good behavior. All judges of compensation appointed prior to the effective date of P.L.1991, c. 513 shall continue to have tenure and shall continue to serve during good behavior. The annual salary of the director shall be 89% of the annual salary of a Judge of the Superior Court. The Chief Judge of Compensation shall be the Director of the Division of Workers' Compensation and may be known as the Director/Chief Judge of the division.

In addition to salary, a Judge of Compensation regularly assigned as an administrative supervisory judge of compensation by the director shall receive additional compensation of \$2,500 per annum during the period of such assignment; and a judge of compensation regularly assigned as a supervising judge of compensation by the director shall receive additional compensation of \$1,500 per annum during the period of such assignment.

Judges of compensation shall not engage in the practice of law, shall devote full time to their judicial duties, and shall have been licensed attorneys in the State of New Jersey for 10 years prior to their appointments. The director of the division shall have the same qualifications for appointment and be subject to the same restrictions as a judge of compensation.

All judges of compensation shall be retired upon attaining the age of 70 years , except that any judge of compensation who has retired on pension or retirement allowance may, with the judge's consent, be recalled by the Director /Chief Judge of the Division of Workers' Compensation for service as a recalled judge in the Division of Workers' Compensation. No recalled judge shall serve beyond his 80th birthday.

Upon such recall the retired judge shall have all the powers of a judge of compensation and shall be paid a per diem allowance fixed by the Director/Chief Judge of the Division of Workers' Compensation. In addition the recalled judge shall be reimbursed for reasonable expenses actually incurred by him in connection with his assignment and shall be provided with such facilities as may be required in the performance of his duties. Such per diem compensation and expenses shall be paid by the State. Payment for services and expenses shall be made in the same manner as payment is made to the judges of the Division of Workers' Compensation from which he retired.

b. A increase in an annual salary of a judge or the director under subsection a. of this section that results due to the increase in the salary of a Judge of the Superior Court provided in N.J.S.2B:2-4 as amended in section 1 of P.L.1995, c.424 (N.J.S.2B:2-4) shall not be granted until July 1, 1996.<sup>1</sup>  
(cf: P.L.1999, c.380, s.7)

**34:15-49.1. Judges of compensation; appointment of referees with service over 10 years; compensation.** Notwithstanding the provisions of R.S. 34:15-49 to the contrary, referees of formal hearings in the Division of Workers' Compensation who have been so employed for a period of 10 years or more and who have been attorneys at law of this State for a period of 10 years or more, are hereby designated judges of compensation and shall commence service as judges of compensation upon the effective date of this act at the first step in salary range 39 of the appropriate compensation plan adopted by the Civil Service Commission in accordance with chapter 8 of Title 11 of the Revised Statutes.<sup>6</sup>

**34:15-49.2. Inapplicability of mandatory retirement for workers' compensation judges, certain.** The mandatory retirement provisions implemented pursuant to this act, P.L. 1999, c. 380 (C. 52:14-15.115 et al.), shall be inapplicable for three years after the effective date of this act to any judge of the Division of Workers' Compensation who is in service on the effective date of this act.

**34:15-49.3. Workers' compensation judges permitted to work beyond age 70.** Notwithstanding the provisions of this act, P.L. 1999, c. 380 (C. 52:14-15.115 et al.), to the contrary, any judge of the Division of Workers' Compensation who is 60 years of age or older on the effective date of this act shall be permitted to continue service as a judge until attaining 10 years of service under the "Public Employees' Retirement System Act," P.L. 1954, c. 84 (C. 43:15A-1et seq.).

**34:15-50. Approval and filing of agreement.** Whenever an employer or his insurance carrier and an injured employee, or the dependents of a deceased employee, shall, by agreement, duly signed, settle upon and determine the compensation due to the injured employee, or to the dependents of a deceased employee, as provided by law, the employer or the insurance carrier shall forthwith file with the bureau a true copy of the agreement. The agreement shall not bind the employer or injured employee, or the

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<sup>6</sup> Repealed; see, now, §§ 11A:3-7,11A:6-24.

dependents of a deceased employee, unless approved by the bureau. If an agreement for lawful and adequate compensation, approved by the bureau, is not filed within twenty-one days after the date of the happening of the injury, the bureau shall, so far as practicable, endeavor to bring about a settlement of the pending claim. If no petition is filed by the injured employee, or the dependents of a deceased employee, the bureau may institute an inquiry on its own motion, to determine the reasons for the failure to agree as to compensation, and may, either before or after the institution of the inquiry, with the consent of the injured employee, or the dependents of a deceased employee, file a petition for compensation. When such petition is filed by said bureau, on its own initiative, the subsequent proceedings shall be the same as is hereinafter set forth in cases where the claimant files a petition.

**34:15-51. Claimant required to file petition within two years; contents; minors.**

Every claimant for compensation under Article 2 of this chapter (§ 34:15-7 et seq.) shall, unless a settlement is effected or a petition filed under the provisions of 34:15-50, submit to the Division of Workers' Compensation a petition filed and verified in a manner prescribed by regulation, within two years after the date on which the accident occurred, or in case an agreement for compensation has been made between the employer and the claimant, then within two years after the failure of the employer to make payment pursuant to the terms of such agreement; or in case a part of the compensation has been paid by the employer, then within two years after the last payment of compensation except that repair or replacement of prosthetic devices shall not be construed to extend the time for filing of a claim petition. A payment, or agreement to pay by the insurance carrier, shall for the purpose of this section be deemed payment or agreement by the employer. A paper copy of the petition shall state the respective addresses of the petitioner and of the defendant, the facts relating to employment at the time of injury, the injury in its extent and character, the amount of wages received at the time of injury, the knowledge of the employer or notice of the occurrence of the accident, and such other facts as may be necessary and proper for the information of the division and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. A paper copy of the petition shall be verified by the oath or affirmation of the petitioner. Proceedings on behalf of an infant shall be instituted and prosecuted by a guardian, guardian ad litem, or next friend, and payment shall be made to the guardian, guardian ad litem, or next friend. The division shall prepare and print forms of petitions and shall furnish assistance to claimants in the preparation of such petitions, when requested so to do.

**34:15-52. Copy of petition served on employer; answer required.** Within 5 days after the filing of the petition or as soon thereafter as is practicable, the Division of Workers' Compensation shall cause a copy of the petition to be forwarded to the employer. The copy shall include a notice directing the employer to file an answer thereto with the division within 30 days after the notice is forwarded, unless the division for good cause shall grant further time, which answer shall give the address of the respondent, and admit or deny the substantial averments of the petition, and shall state the contention of the defendant with reference to the matters in dispute as disclosed by the petition. The

answer shall be verified by the oath or affirmation of the respondent, and shall be filed in a manner prescribed by regulation.

**34:15-53. Time, place and notice of hearing; adjournment.** Within 20 days after the filing of an answer, or the expiration of the time for filing an answer if no answer is filed, the secretary of the division shall fix a time and place for hearing the petition, or shall send the petition and answer or a transcript of the petition and answer to the director, a deputy director or 1 of the referees, in which case such director, deputy director or referee, within 20 days after the filing of the answer, shall fix a time and place for the hearing of the petition. Such time shall be not less than 4 weeks nor more than 6 weeks after the filing of the petition, provided however, that in cases where the extent of permanent disability, total or partial, is an issue, the determination of such issue shall be deferred as provided in section 34:15-16 of this Title. The petition shall be heard either in the county in which the injury occurred or in which the petitioner or respondent resides, or in which the respondent's place of business is located, or in which the respondent may be served with process. When a time and place has been fixed for such hearing, the director, deputy director or the referee to whom the cause has been referred shall give at least 10 days' notice to each party of the time and place of hearing. The director, deputy director or any referee to whom a cause has been referred, shall have power to adjourn the hearing thereof from time to time in his discretion.

**34:15-54. Dismissal of petition; notice; reinstatement.** No petition shall be dismissed for want of prosecution or for failure to formally adjourn the cause, until after notice shall be served by the respondent on the petitioner or his attorney that unless the cause is moved for hearing within one month from the date of the service thereof, the claim will be considered abandoned and the petition dismissed subject, however, to the right to have the petition reinstated for good cause shown, upon application made to the deputy commissioner before whom the matter was heard or to the Commissioner of Labor within one year thereafter. No claim heretofore made shall be considered abandoned because the petition was dismissed under this section, if such petition has been reinstated for good cause shown, and such petition shall be deemed to have been dismissed without prejudice to further proceedings upon said petition, and further proceedings thereon shall be as effective as though said petition had not been dismissed.

**34:15-54.1. Referee's powers as to dismissal of petitions for want of prosecution and reinstatement; discontinuances.** Any referee designated as a "referee, formal hearings," shall have the same power as a deputy director in respect to the dismissal of formal petitions for want of prosecution and reinstatement thereof in accordance with the provisions of section 34:15-54 of the Revised Statutes, and the approval of discontinuances of formal petitions.

**34:15-55. Service of papers.** It shall be sufficient service of any paper, except the original notice to the defendant, if the same is sent by registered mail, addressed to the petitioner at the address contained in the petition, or to the defendant at the address contained in the answer.

**34:15-55.1. Secretary of workmen's compensation bureau as agent for service of process on nonresidents; method and effect of service; continuances.** Any employer, not a resident of this State, or any employer not licensed to do business in this State, or any resident employer who becomes a nonresident of this State after the occurrence of an injury to an employee, who shall employ or who shall have employed any person to perform work, labor or services within this State shall be deemed by the accepting of the privilege of engaging in such work, labor and services by his or its employees to make, constitute and appoint the secretary of the workmen's compensation bureau as his or its agent for the acceptance of process in any proceeding by any such employee or dependent or representative of such employee, under and by virtue of this chapter; and the acceptance of such privilege or the entering into this State for the purpose of engaging in such employment shall be a signification of such employer that any such process issued against him or it, which is so served, shall be of the same legal force and validity as if served upon him or it personally.

Service of such process shall be made by leaving a copy of the petition with the secretary of the bureau, or some one designated by him in his office, and such service shall be sufficient service upon such nonresident employer; provided, that notice of such service and a copy of the petition are forthwith sent by registered mail to the respondent to the address stated in such petition, by the secretary of the bureau, or such person acting for him in his office, and the respondent's return receipt and the affidavit of the secretary of the bureau, or such person in his office acting for him, of the compliance therewith are appended to such petition and filed in the office of the secretary of the bureau wherein such action may be pending; provided, also, that the date of the mailing and the date of the receipt of the return card aforesaid are properly indorsed on such petition and signed by the secretary of the bureau, or some one acting for him.

The workmen's compensation bureau in which such action is pending may order such continuance as may be necessary to afford the respondent a reasonable opportunity to defend the action. The secretary of the bureau shall keep a record of all such processes which shall show the day and hour of such service.

This section shall be construed to extend the right of service of process upon nonresidents and shall not be construed as limiting any provisions for the service of process now or hereafter existing.

**34:15-56. Rules of evidence.** At such hearing evidence, exclusive of ex parte affidavits, may be produced by both parties, but the official conducting the hearing shall not be bound by the rules of evidence.

**34:15-57. Summary hearing; power to modify and commute award, determination and rule for judgment or order approving settlement.** The commissioner, the director, and each deputy director, is hereby authorized to hear and determine the matters in dispute in a summary manner, and each shall have power to modify any award of compensation, determination and rule for judgment or order approving settlement and to

provide for the commutation of any such award, determination and rule for judgment or order approving settlement.

**34:15-57.1. Reimbursement of benefits paid under Temporary Disability Benefits Law.** Whenever an employee becomes entitled to or is awarded compensation for temporary disability pursuant to chapter fifteen of Title 34 of the Revised Statutes for the same weeks or period with respect to which he has received disability benefits pursuant to the Temporary Disability Benefits Law (P.L.1948, c. 110),<sup>7</sup> the Deputy Directors or Referees of the Division of Workmen's Compensation are authorized to incorporate in such award, order, or approval of settlement, an order requiring the employer or his insurance carrier to reimburse the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer involved in the claim under chapter fifteen of Title 34 of the Revised Statutes, or his insurance carrier, as the case may be, the amount of any disability benefits it may have paid to such employee.

**34:15-57.2. Inquiry as to other payments received before paying compensation; proof of amounts paid.** Whenever an employer or his insurance carrier involved in the claim under chapter fifteen of Title 34 of the Revised Statutes shall receive written notice from the Division of Employment Security of the New Jersey Department of Labor and Industry that disability benefits have been paid to an employee as a result of an accident or sickness for which the said employee may be entitled to benefits under chapter fifteen of Title 34 of the Revised Statutes, such employer or his insurance carrier, as the case may be, shall, before making any payment on account of any pending award, order, or settlement under said chapter fifteen of Title 34 of the Revised Statutes, inquire of the employee as to whether or not he has received disability benefits by reason of the same accident or sickness and advise the Division of Employment Security of the New Jersey Department of Labor and Industry or the employer who made payment of the disability benefits, or his insurance carrier, as the case may be, of the result of such inquiry.

In proceedings before the Division of Workmen's Compensation, it shall be the duty of the employer against whom claim is made under chapter fifteen of Title 34 of the Revised Statutes, and his insurance carrier, if any, to present, at any hearing involving a workmen's compensation claim affected by this act, sufficient proof as to the amounts paid under the Temporary Disability Benefits Law (P.L.1948, c. 110),<sup>8</sup> for which reimbursement is allowable in pursuance of the provisions of the Temporary Disability Benefits Law (P.L.1948, c. 110), such proof to be furnished by the Division of Employment Security of the New Jersey Department of Labor and Industry, the employer who made payment of the disability benefits or his insurance carrier, as the case may be.

**34:15-57.3. Effective date.** This act<sup>9</sup> shall take effect on the first day of July, one thousand nine hundred and fifty.

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<sup>7</sup> N.J.S.A. §§ 34:15-25 to 34:15-56.

<sup>8</sup> N.J.S.A. §§ 34:15-25 to 34:15-56

<sup>9</sup> N.J.S.A. §§ 34:15-57.2 to 34:15-57.3

**34:15-57.4. Workers' compensation fraud; criminal and civil penalties.** 1.a. A person shall be guilty of a crime of the fourth degree if the person purposely or knowingly:

(1) Makes, when making a claim for benefits pursuant to R.S. 34:15-1 et seq., a false or misleading statement, representation or submission concerning any fact that is material to that claim for the purpose of wrongfully obtaining the benefits;

(2) Makes a false or misleading statement, representation or submission, including a misclassification of employees, or engages in a deceptive leasing practice, for the purpose of evading the full payment of benefits or premiums pursuant to R.S. 34:15-1 et seq.; or

(3) Coerces, solicits or encourages, or employs or contracts with a person to coerce, solicit or encourage, any individual to make a false or misleading statement, representation or submission concerning any fact that is material to a claim for benefits or the payment of benefits or premiums, pursuant to R.S. 34:15-1 et seq. for the purpose of wrongfully obtaining the benefits or of evading the full payment of the benefits or premiums.

b. Any person who wrongfully obtains benefits or evades the full payment of benefits or premiums by means of a violation of the provisions of subsection a. of this section shall be civilly liable to any person injured by the violation for damages and all reasonable costs and attorney fees of the injured person.

c. (1) If a person purposely or knowingly makes, when making a claim for benefits pursuant to R.S. 34:15-1 et seq., a false or misleading statement, representation or submission concerning any fact which is material to that claim for the purpose of obtaining the benefits, the division may order the immediate termination or denial of benefits with respect to the claim and a forfeiture of all rights of compensation or payments sought with respect to the claim.

(2) Notwithstanding any other provision of law, and in addition to any other remedy available under law, if that person had received benefits pursuant to R.S. 34:15-1 et seq. to which the person is not entitled, he is liable to repay the sum plus simple interest deducted from future benefits payable to that person, and the division shall issue an order providing for the repayment or deduction.

(3) Notwithstanding any other provision of law, and in addition to any other remedy available under law, a person who evades the full payment of premiums pursuant to R.S. 34:15-1 et seq. or improperly denies or delays benefits pursuant to R.S. 34:15-1 et seq. is liable to pay the sum due and owing plus simple interest.

d. Nothing in this section shall preclude, if the evidence so warrants, indictment and conviction for a violation of any provision of chapter 20, 21 or 28 of Title 2C of the New Jersey Statutes or any other law. For the purpose of this section, "purposely," "knowingly" and "purposely or knowingly" have the same meaning as is provided in chapter 2 of Title 2C of the New Jersey Statutes.

2. This act shall take effect immediately.

**34:15-58. Decision, award, determination and rule for judgment or order approving settlement and statement to be filed; receipts; bar.** A statement containing the date and place of hearing, together with the decision, award, determination and rule for judgment

rev. date January 17, 2010

or the order approving settlement, shall be legibly written in ink or typewritten and filed in the office of the secretary at Trenton, by the officer hearing such cause, which statement, together with the petition and answer, shall constitute the record of the cause. A copy of the decision, award, determination and rule for judgment or order approving settlement, if same results in an award to the petitioner, shall, as soon as practicable after the same is rendered, be filed in the office of the clerk of the county in which the hearing was held, and when so filed, shall have the same effect and may be collected and docketed in the same manner as judgments rendered in causes tried in the Superior Court. The employer may once every month file receipt of payment, verified by affidavit that the receipts are accurate and true, with the clerk of the court, which shall be entered in satisfaction of the award, determination and rule for judgment or order approving settlement, to the extent of such payments. The official conducting the hearing shall, within fifteen days after the rendering of the award, determination and rule for judgment or order approving settlement, mail to each of the parties a statement of the substance of the award, determination and rule for judgment or order approving settlement, or a copy of such award, determination and rule for judgment or order approving settlement. The decision, award, determination and rule for judgment or order approving settlement shall be final and conclusive between the parties and shall bar any subsequent action or proceeding, unless reopened by the Division of Workers' Compensation or appealed as hereinafter provided.

**34:15-59. Docket; records.** The secretary of the bureau shall keep a docket in which shall be entered the title of each cause, the date of the determination thereof, the date of appeal, if any, and the date on which the record in case of appeal was transmitted to the appellant. The secretary shall also file the record of each case left with him by the official conducting the hearing, and shall keep a card index of such record in such manner as to afford ready reference thereto. Such records shall be open to the inspection of the public.

**34:15-60. Subpoenas; witness fees; punishment for misconduct.** The director, each deputy director and each of the referees shall have the same power as the Superior Court to issue subpoenas to compel the attendance of witnesses and the production of books and papers. The fees for the attendance of witnesses shall be such as are now provided for the attendance of witnesses in other civil cases, and shall be paid by the party arranging for the attendance of such witnesses. The subpoenas shall be authenticated by the seal of the department, and either party to any such proceeding may, without charge, secure subpoenas from the director, a deputy director or any referee. Misconduct on the part of any person attending a hearing, or the failure of any witness, when duly subpoenaed to attend or give testimony shall be punishable by the director, each deputy director and each of the referees, in the same manner as such failure is punishable by the Superior Court in a case therein pending.

**34:15-61. Administering oaths; perjury.** The commissioner, each deputy commissioner and each referee shall have power to administer oaths. Any person who, having been sworn as a witness in any such proceeding, shall willfully give false testimony shall be guilty of perjury.

**34:15-62. Public hearings.** All hearings conducted under this chapter shall be open to the public.

**34:15-63. No filing fees.** Neither party shall pay any fees for filing any papers with the division or with the secretary thereof, and the clerk of any county shall file any papers required by this chapter to be filed with him without the payment of any fee.

**34:15-64. Rules and regulations; witness fees; attorney fees; costs.** a. The commissioner, director and the judges of compensation may make such rules and regulations for the conduct of the hearing not inconsistent with the provisions of this chapter as may, in the commissioner's judgment, be necessary. The official conducting any hearing under this chapter may allow to the party in whose favor judgment is entered, costs of witness fees and a reasonable attorney fee, not exceeding 20% of the judgment; and a reasonable fee not exceeding \$400 for any one witness, except that the following fees may be allowed for a medical witness:

(1) (a) A fee of not more than \$400 paid to an evaluating physician for an opinion regarding the need for medical treatment or for an estimation of permanent disability, if the physician provides the opinion or estimation in a written report; and

(b) An additional fee of not more than \$400 paid to the evaluating physician who makes a court appearance to give testimony; or

(2) (a) A fee of not more than \$450 paid to a treating physician for the preparation and submission of a report including the entire record of treatment, medical history, opinions regarding diagnosis, prognosis, causal relationships between the treated condition and the claim, the claimant's ability to return to work with or without restrictions, what, if any, restrictions are appropriate, and the anticipated date of return to work, and any recommendations for further treatment; and

(b) (i) An additional fee of not more than \$300 per hour, with the total amount not to exceed \$2,500, paid to the treating physician who gives testimony concerning causal relationship, ability to work or the need for treatment; or

(ii) An additional fee of not more than \$300 per hour, with the total amount not to exceed \$1,500, paid to the treating physician who gives a deposition concerning causal relationship, ability to work or the need for treatment.

b. (1) No fee for an evaluating physician pursuant to this section shall be contingent on whether a judgment or award is or is not made in favor of the petitioner.

(2) No evaluating or treating physician shall charge any fee for a report, testimony or deposition in excess of the amount permitted pursuant to the provisions of this section.

c. A fee shall be allowed at the discretion of the judge of compensation when, in the official's judgment, the services of an attorney and medical witnesses are necessary for the proper presentation of the case. In determining a reasonable fee for medical witnesses, the official shall consider (1) the time, personnel, and other cost factors required to conduct the examination; (2) the extent, adequacy and completeness of the medical evaluation; (3) the objective measurement of bodily function and the avoidance of the use of subjective complaints; and (4) the necessity of a court appearance of the medical witness. When, however, at a reasonable time, prior to any hearing compensation has been offered and the amount then due has been tendered in good faith or paid within

rev. date January 17, 2010

26 weeks from the date of the notification to the employer of an accident or an occupational disease or the employee's final active medical treatment or within 26 weeks after the employee's return to work whichever is later or within 26 weeks after employer's notification of the employee's death, the reasonable allowance for attorney fee shall be based upon only that part of the judgment or award in excess of the amount of compensation, theretofore offered, tendered in good faith or paid. When the amount of the judgment, or when that part of the judgment or award in excess of compensation, offered, tendered in good faith or paid as aforesaid, is less than \$200, an attorney fee may be allowed not in excess of \$50.

d. All counsel fees of claimants' attorneys for services performed in matters before the Division of Workers' Compensation, whether or not allowed as part of a judgment, shall be first approved by the judge of compensation before payment. Whenever a judgment or award is made in favor of a petitioner, the judges of compensation or referees of formal hearings shall direct amounts to be deducted for the petitioner's expenses and to be paid directly to the persons entitled to the same, the remainder to be paid directly to the petitioner. (cf:P.L. 1981, c.414, s.1).

**34:15-65. Deposition of absent witness.** The deposition of a witness whose attendance before said bureau cannot be secured by reason of his absence from the State, or by reason of his physical inability to attend the hearing may be taken upon order of the official to whom said cause has been referred. In any such case the procedure for taking such depositions shall conform as nearly as practicable with the procedure for taking depositions in the Superior Court.

**34:15-66. Appeal; costs.** Any party may appeal from the judgment of a judge of compensation to the Appellate Division of the Superior Court, which appeal shall be taken in accordance with the rules of court. The judgment entered in any court on any such appeal shall be conclusive and binding, and proceedings thereon shall only be for the recovery of moneys thereby determined to be due. Nothing herein contained shall be construed as limiting the jurisdiction of the Supreme Court. Costs may be awarded in accordance with the rules of any court to which an appeal is taken.

**34:15-66.1. Judgment docketed; execution; supplementary proceedings.** Any judgment entered in the Appellate Division of the Superior Court pursuant to the provisions of section 34:15-66 of this Title may be entered and docketed in the Law Division of the Superior Court, and shall thenceforward operate as a judgment recovered in that court as in any other case. Upon failure to comply with the original order for compensation the court may order that the entire amount of compensation shall become due immediately, and execution may issue upon proof of such failure for the entire amount of compensation, without discount or commutation. Supplementary proceedings in aid of execution may be resorted to upon a judgment so entered and docketed and becoming due in whole, as in any other case.

**34:15-67. Repealed by L.1953, c. 33, p. 599, § 59.**

**34:15-68. Physical examination of employee.** In all cases where it shall be necessary to make a physical examination of an employee in an inquiry to award compensation, the examination shall be made by a physician who is the same sex as the employee if so requested by the employee.

**34:15-69. Copy of judgment to be filed with director.** Whenever any judgment is entered in the Appellate Division of the Superior Court upon any matter arising under the provisions of this chapter the clerk of the Appellate Division of the Superior Court shall forthwith forward to the director a copy of the judgment, which need not be certified and for which no charge shall be made.

## Article 4A. RELIEF FROM LIABILITY FOR AWARDS

**34:15-69.1. Discontinuance or sale of business; discharge of employer from further liability; assumption of obligations by third party.** Whenever any employer has discontinued his business or sold or otherwise disposed of the greater part of his business or assets, the division may, upon application to the commissioner or any deputy director by any party to an award, upon 10 days' written notice to all other parties, and after hearing, order such employer discharged from further liability for such award, provided that said commissioner or deputy director finds that a third party has filed with the division a satisfactory undertaking in writing assuming all obligations of such award and the claim or claims upon which it is based in lieu of and in place of such employer and provided further that such third party either is an employer operating under section 34:15-77 of this Title or has filed with the division a certificate signed by the Commissioner of Banking and Insurance certifying that such third party meets all requirements to become an employer operating under said section, or is a stock company or mutual association authorized to write workmen's compensation or employer's liability insurance in this State.

**34:15-69.2. Order discharging employer; filing; effect as to third party assuming obligations.** Such order shall by its terms discharge the employer from any and all claims, demands or liabilities whatsoever for or on account of such an award or the claim or claims upon which it is based and shall substitute such third party as the respondent, obligor and debtor of and on account of such award, the claim or claims upon which it is based and any and all claims, demands or liabilities whatsoever arising therefrom. The employee or the dependents of the employee or the personal representatives thereof shall have no further recourse whatsoever against such employer, but shall have and retain all their rights against such third party as though he were the employer against whom the award was originally entered. Such order shall be filed in the office of the secretary in Trenton in accordance with section 34:15-58 of this Title, and shall constitute part of the record in the cause, and a copy of such order shall be filed in the office of the clerk of the county in which the original award was filed, shall be indexed and cross-indexed by said clerk to said original award and, when so filed and indexed and cross-indexed to such award, shall have the same effect as to such third party and may be collected and docketed in the same manner as judgments rendered in causes tried in the Superior Court.

**34:15-69.3. Applicability of provisions of Title to third party assuming obligations.** All provisions of this Title not inconsistent herewith shall thenceforth apply as against such third party with the same force and effect as though such third party were the party against whom the original award was entered.

**34:15-70. Short title.** This article may be cited as the "employers' liability insurance law."

**34:15-71. Employer's obligation to injured employee.** Every employer, except the state or a municipality, county or school district, who is now or hereafter becomes subject to the provisions of article 2 of this chapter (§ 34:15-7 et seq.), as therein provided, shall

rev. date January 17, 2010

forthwith make sufficient provision for the complete payment of any obligation which he may incur to an injured employee, or his dependents under the provisions of said article 2, by one of the methods hereinafter set forth in sections 34:15-77 and 34:15-78 of this title.

**34:15-72. Employers not electing benefits of compensation law required to insure.** In like manner every employer except the state or a municipality, county or school district who is now or hereafter becomes subject to the provisions of article 1 of this chapter (§ 34:15-1 et seq.) shall forthwith make sufficient provision for the complete payment of any obligation which he may incur to an injured employee or his administrators or next of kin under said article 1 of this chapter.

**34:15-73. Proof of compliance.** On demand of the commissioner of banking and insurance personally or in writing mailed to the post-office address of the employer by registered mail, the employer shall file with such commissioner on forms prescribed by him proof of compliance with the provisions of this article.

**34:15-74. Compensation insurance by governing body and fire district committee for volunteer reserve or auxiliary policemen, firemen and first aid and emergency squad workers.** Except as otherwise provided in this section, the governing body of every municipality and the committee of every fire district shall provide compensation insurance for special, reserve or auxiliary policemen doing volunteer public police duty, for volunteer firemen doing public fire duty and volunteer first aid and emergency squad workers doing public first aid and rescue duty under the control or supervision of any commission, council or other governing body of the municipality or any board of fire commissioners of such municipality or of any fire district, and the board of chosen freeholders shall provide compensation insurance for county fire marshals and assistant county fire marshals, within the meaning of R.S. 34:15-43. Such insurance shall provide compensation for every special, reserve or auxiliary policeman, and for every such fireman or authorized first aid or rescue squad worker or county fire marshal or assistant county fire marshal who shall be a member of any first aid or rescue squad created within the fire company of which he is a member or authorized first aid or rescue squad worker, or composed of members and authorized first aid or rescue squad workers of different fire companies in the same municipality for injuries received while acting in response to any call made upon such squad, for first aid or rescue work, whether such call be made because of a fire or otherwise.

The provisions of this section shall not require the governing body of any municipality or the committee of any fire district which contributes to the support of a volunteer fire company or volunteer first aid or rescue squad serving said municipality or district but located, or its headquarters maintained, without said municipality or district to provide compensation insurance for the members of said company or squad who are covered by compensation insurance carried by the municipality or district within which said company or squad is located, or its headquarters maintained, whenever evidence of such insurance coverage is supplied to or otherwise obtained by said governing body or committee, nor shall the provisions of this section require the governing body of any

rev. date January 17, 2010

municipality or the committee of any fire district to provide compensation insurance whenever evidence that a fire company has obtained its own insurance coverage is provided to the governing body or committee.

Except as otherwise provided by this section, the governing body of a municipality or county shall provide compensation insurance for each emergency management volunteer registered with and doing emergency management service on behalf of that municipality or county pursuant to P.L.1942, c. 251 (C. App. A:9-33 et seq.), unless the governing body provides workers' compensation coverage for each emergency management volunteer and has evidence of such coverage or the governing body has received or obtained proof that workers' compensation insurance coverage for each emergency management volunteer is provided by an emergency management council.

The provisions of this section shall not require the governing body of a municipality to pay for compensation insurance or make reimbursement of any portion of the expense of medical, surgical or hospital treatment for an emergency management volunteer, if that insurance or reimbursement is being furnished by the United States Government or any agent thereof. (cf:P.L. 1978, c.145, S.2)

**34:15-74.1. Compensation insurance by volunteer fire company for volunteer firemen and volunteer first aid or rescue squad workers.** Any volunteer fire company may provide compensation insurance for member volunteer firemen doing public fire duty and volunteer first aid or rescue squad workers doing public first aid and rescue duty for a first aid or rescue squad organized within such a fire company. Such insurance shall provide compensation under and by virtue of the article to which this section is a supplement<sup>10</sup> and of article 2, of chapter 15, of Title 34 of the Revised Statutes<sup>11</sup> for every such fireman or authorized first aid or rescue squad worker who may be injured in line of duty, as the same is defined in R.S. 34:15-43.

Evidence of the insurance coverage authorized by this section shall be provided by the fire company to the governing body of any municipality or the committee of any fire district which contributes to the support and maintenance of such fire company.

**34:15-74.2. Compensation insurance by board of education for members of board.** Every board of education shall provide compensation insurance for its members covering the performance of their official duties as members of the board and also as members or officers of a county school board federation or of the State Federation of District Boards of Education. All payments of compensation to such board members shall be governed by and be subject to the provisions of this chapter. The premiums therefor shall be paid by the board, and the insurance shall protect such persons from loss by reason of injury or death suffered while in the performance of duty as herein provided.

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<sup>10</sup>34:15-7 et seq.

<sup>11</sup> 34:15-70 et seq.

**34:15-75. Volunteer firemen, county fire marshals, volunteer first aid or rescue squad workers, volunteer drivers of ambulance, forest fire wardens or fighters, members of boards of education, and volunteer special reserve or auxiliary policemen; basis of compensation.** Compensation for injury and death, either or both, of any volunteer fireman, county fire marshal, assistant county fire marshal, volunteer first aid or rescue squad worker, volunteer driver of any municipally-owned or operated ambulance, forest fire warden or forest fire fighter employed by the State of New Jersey, member of a board of education, special reserve or auxiliary policeman doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, emergency management volunteer doing emergency management service, or any volunteer worker for the Division of Parks and Forestry, the Division of Fish and Wildlife, the New Jersey Natural Lands Trust or the New Jersey Historic Trust, shall:

a. Be based upon a weekly salary or compensation conclusively presumed to be received by such person in an amount sufficient to entitle him, or, in the event of his death, his dependents, to receive the maximum compensation by this chapter authorized; and

b. Not be subject to the seven-day waiting period provided in R.S. 34:15-14.

**34:15-76. Payments; laws governing; premiums paid from tax levy.** All payments of compensation to volunteer firemen, county fire marshals, assistant county fire marshals, volunteer first aid or rescue squad workers, volunteer drivers of any municipally-owned or operated ambulance, special, reserve or auxiliary policemen doing volunteer public police duty under the control or supervision of any commission, council or any other governing body of any municipality, or emergency management volunteers doing emergency management service, shall be governed by and be subject to the provisions of this chapter. The premiums therefor shall be paid from the tax levy, and the insurance shall protect such persons from loss by reason of injury or death suffered while engaged in the performance of duty. (cf:P.L. 1978, c.145, S.4)

**34:15-77. Employer carrying own insurance.** Any employer desiring to carry his own liability insurance may make application to the Commissioner of Insurance showing his financial ability to pay compensation. The commissioner, if satisfied of the applicant's financial ability and the permanence of his business, shall by written order exempt the applicant from insuring the whole or any part of his compensation liability.

The commissioner may from time to time require any employer exempted as herein provided to furnish further statements of financial ability and if at any time it appears to him that any such employer is no longer financially able to carry the risk of compensation liability the commissioner shall revoke his order granting exemption, whereupon the employer shall immediately insure his liability under this chapter in a mutual association or other insurance company authorized to engage in workers' compensation in this State. Whenever the commissioner is not satisfied with the financial ability and the permanence of the business of an employer exempted as herein provided, or of a new applicant for exemption, he may consider, and shall have the authority to accept, as evidence of such ability to pay compensation, (a) a guaranty by the parent corporation of such applicant

rev. date January 17, 2010

that said parent corporation will discharge the applicant's liability under this chapter; (b) a separate account or reserve fund, or any deposit thereupon, maintained by an applicant to discharge his liability under this chapter; (c) a surety bond executed by an association or corporation licensed to do business in this State, provided the surety on any such surety bond undertakes to discharge the applicant's liability under this chapter; or (d) a contract of an employer with an insurance carrier covering liability for a portion of the compensation required under article 2, chapter 15, Title 34 of the Revised Statutes.<sup>12</sup>

Any employer or group of employers exempted as herein provided may for its own protection insure its liability for the payment of any stated loss in excess of \$100,000.00 by reason of any single accident or by reason of occupational diseases scheduled in this chapter; provided, that any such contract of insurance shall operate only between the employer or group of employers and its insurance carrier and shall not be subject to any of the provisions of this chapter.

An application pertaining only to a change of name of a presently exempt employer, without any change in the financial structure of said employer, shall not be considered as a new application for exemption under this act.

Pursuant to rules and regulations established by the Commissioner of Insurance, 10 or more employers licensed by the State as hospitals under the "Health Care Facilities Planning Act," P.L.1971, c. 136 (C. 26:2H-1 et seq.) may make application to the commissioner for permission to enter into agreements to pool their liabilities under this chapter for the purpose of qualifying as self-insurers. An employer member of the approved group shall be classified as a self-insurer.

**34:15-77.1. Hospitals; group self-insurance; conditions.** With respect to any group of employers licensed by the State as hospitals who adopt a plan for self-insurance for the payment of compensation to their employees, at least the following conditions shall apply:

a. Under such group plan, the group shall assume the liability of all the employers within the group under the terms of a trust agreement approved by the commissioner, and pay all compensation for which the employers are liable under Title 34 of the Revised Statutes;

b. When making application to the commissioner for permission to establish a group plan for self-insurance, the group shall present satisfactory proof to the commissioner of its financial ability to pay such compensation for the employers who are members of the group, including a statement of the group's revenues, their source, and assurance for their continuance;

c. If required by the commissioner, the group shall deposit with the commissioner such types and amounts of securities or surety bonds as the commissioner deems necessary to provide assurance that such benefits as are payable by the group will continue to be paid and that the group will meet its statutory obligations;

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<sup>12</sup> 34:15-7 et seq.

d. The commissioner may require the group to file any and all agreements, contracts, and such other pertinent documents as he may deem necessary relating to the organization of the employers in the group;

e. Each group self-insurer, in its application for self-insurance shall set forth the names and addresses of each of its officers, directors, trustees, and general manager. No officer, director, trustee, or employee of the group self-insurer may represent or participate directly or indirectly on behalf of an injured worker or his dependents in any workers' compensation proceeding.

**34:15-77.2. Liability for compensation prescribed by Title 34; bankruptcy of participating employer.** Any employer licensed by the State as a hospital who participates in group self-insurance shall not be relieved from the liability for compensation prescribed by Title 34 of the Revised Statutes except by the payment thereof by the group self-insurer or by himself. The insolvency or bankruptcy of a participating employer shall not relieve the group self-insurer from the payment of compensation for injuries or death sustained by an employee during the time the employer was a participant in such group self-insurance.

**34:15-77.3. Addition or termination of participating employers; notice.** Such group self-insurer shall promptly notify the commissioner, on a form to be prescribed by the commissioner, of the addition of any participating employer or employers. Notice of termination of any participating employer in a group self-insurance plan shall be given to the commissioner at least 10 days before the effective date of such termination of participation. Such notice shall also be sent by registered mail to all other members of the group self-insurance plan.

**34:15-77.4. Termination of plan; surety bond; insurance policy.** If such a group self-insurance plan is terminated, the securities or surety bond on deposit with the commissioner shall remain in the custody of the commissioner for a period of at least 26 months. At the expiration of such time or such further period as the commissioner may deem proper and necessary, he may accept in lieu thereof, and for the additional purpose of securing such further and future contingent liability as may arise from prior injuries to workers and be incurred by reason of any change in the condition of such workers which warrants awards for additional compensation, a policy of insurance furnished by the group self-insurer, its successor, assigns, or others carrying on or liquidating such self-insurance group.

**34:15-77.5. Financial statement; description of service organizations.** Every such group self-insurer shall, on an annual basis, or as often as the commissioner deems it necessary, furnish to the commissioner:

a. A financial statement of the group's assets and liabilities, the claims paid during the preceding 12 months, current reserves, incurred losses, and any other information that the commissioner may require; and

b. A description of the service organizations maintained by the employer or group for the prevention of injuries and claims administration services.

**34:15-77.6. Annual examination.** The commissioner may conduct such annual examinations of each such group self-insurer as he deems necessary and proper.

**34:15-77.7. Denial of application or revocation of consent.** The commissioner shall have the authority to deny the application of any group of self-insurers to pay such benefits, or to revoke his consent for any group continuing to pay, for good cause shown, including, but not limited to:

a. Failure to comply with regulations adopted by the commissioner or with any provisions of this act;

b. Failure to comply with a lawful order of the commissioner;

c. Deterioration of financial condition to such an extent that such deterioration would have an adverse effect on the ability of the self-insurance group to pay expected losses.

**34:15-77.8. Rules and regulations.** The Commissioner of Insurance shall promulgate such rules and regulations, including appropriate fee schedules, as he deems necessary to effectuate the provisions of this act.

**34:15-78. Insurance in stock or mutual company; notice filed by company; domestic help excepted.** Every employer not operating under section 34:15-77 of this title shall insure and keep insured his liability in any stock company or mutual association authorized to engage in workmen's compensation or employer's liability insurance in this State. If insurance be effected by either method mentioned in this section, the insurance company or mutual association shall file with the commissioner of banking and insurance a notice setting forth the name of the insurance company, its principal office in this State, together with a copy of the policy of insurance and copies of all endorsements attached and such other data in relation thereto as the commissioner of banking and insurance may require except that no such filing shall be required in connection with insurance coverage for domestic servants or household employees written pursuant to P.L.1979, c. 380.

## Article 5. COMPULSORY INSURANCE

### **34:15-79 Penalties for failure to carry insurance.**

a. An employer who fails to provide the protection prescribed in this article, who misrepresents one or more employees as independent contractors, or who provides false, incomplete or misleading information concerning the number of employees shall be guilty of a disorderly persons offense and, if the failure, misrepresentation or provision of false, incomplete or misleading information is knowing, shall be guilty of a crime of the fourth degree and shall be subject to a stop-work order issued by the Director of the Division of Workers' Compensation pursuant to subsection e. of this section. 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.

b. 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.

c. 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.

d. 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). Failure or refusal to comply with a stop work order issued by the Director of the Division of Workers' Compensation pursuant to subsection e. of this section shall, in addition to any other penalties provided by law, result in the assessment of a penalty of not less than \$1,000 and not more than \$5,000 for each day found not to be in compliance. All penalties collected under this section shall be paid into the "uninsured employer's fund."

e. If the Director of the Division of Workers' Compensation determines, after investigation, that an employer knowingly failed to provide the protection prescribed in this article, knowingly misrepresented one or more employees as independent contractors, or knowingly provided false, incomplete or misleading information concerning the number of employees, the director shall issue, not later than 72 hours after making the determination, a stop-work order requiring the cessation of all business operations of that employer at every site at which the violation occurred. The order shall take effect when served upon the employer, or, for a particular employer worksite, when served at that worksite. The order shall remain in effect until the director issues an order releasing the stop-work order upon finding that the employer has come into compliance with the requirements of this section and has paid any penalty assessed under this section. A stop-work order issued pursuant to this section against an employer shall apply against any successor firm, corporation or partnership of the employer in the same manner that it applies to the employer. An employer who is subject to a stop-work order shall have the right to apply to the director, not more than 10 days after the order is issued, for a hearing to contest whether the employer committed the violation on which the order was based, and the hearing shall be afforded and a decision rendered within 48 hours of the application.

f. The Commissioner of Labor and Workforce Development shall, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), promulgate rules and regulations necessary to implement the provisions of this section.1(cf: P.L.2008, c.94, s.1)

Amended 1938, c.130; 1966, c.126, s.8; 1988, c.25, s.13; 1995, c.393, s.1; 2008, c.94, s.1., 2008, c.94, s.1

**34:15-79.1 Proof of workers' compensation coverage required with certain annual reports of employers.**

a. Every corporation, limited partnership, limited liability company, limited liability partnership or other employer required by law to submit an annual report, shall also include valid proof of workers' compensation coverage, if applicable, as part of the annual report. Without the inclusion of the valid proof of coverage, the annual report is not complete for purposes of filing, the requirement to submit the annual report is not fulfilled, and all requirements concerning the failure to submit the annual report shall apply.

b. For the purposes of this section, valid proof of current workers' compensation coverage shall be in the form of:

(1) Documentation of a current order from the Commissioner of Banking and Insurance authorizing the employer to be a self-insured employer pursuant to R.S.34:15-77; or

(2) A letter from an insurance carrier or verification from the employer which includes the name of the carrier, insurance policy number and date of commencement of coverage under the policy.

This act shall take effect on the 90th day following enactment.

L.2008, c.95, s.1.

**34:15-80. Notices of insurance posted.** Every employer who has complied with the provisions of this article shall post and maintain in a conspicuous place or places in and about his place of business, typewritten or printed notices in such form as the commissioner of banking and insurance may prescribe stating that he has secured the payment of compensation to his employees and their dependents in accordance with the provisions of this article and shall name the company or companies insuring his liability, or shall state that the employer has qualified before the commissioner of banking and insurance for the carrying of his own liability.

**34:15-81. Cancellation of contract; notice.** Any contract of insurance issued by a stock company or mutual association against liability arising under this chapter may be canceled by either the employer or the insurance carrier within the time limited by such contract for its expiration.

No such policy shall be deemed to be canceled until:

a. At least ten days' notice in writing of the election to terminate such contract is given by registered mail by the party seeking cancellation thereof to the other party thereto; and

b. Until like notice shall be filed in the office of the commissioner of banking and insurance, together with a certified statement that the notice provided for by paragraph "a" of this section has been given; and

c. Until ten days have elapsed after the filing required by paragraph "b" of this section has been made.

rev. date January 17, 2010

The provisions “b” and “c” of this section shall not apply where the employer has replaced the contract to be canceled by other insurance, and notice of such replacement has been filed with the Commissioner of Banking and Insurance. In such event the notice required by provision “a” may, if given by the insurance carrier, recite as the termination date the effective date of the other insurance, and the contract shall be terminated retroactively as of that date. No notice of cancellation of any such contract need be filed in the office of the Commissioner of Banking and Insurance where the employer is not required by any law of this State to effect such insurance.

**34:15-82. Liability for injuries or death.** An employer securing the payment of compensation by any of the methods prescribed in section 34:15-78 of this title notwithstanding, shall be liable primarily for the payment of proper compensation for personal injuries or death sustained by his employees. The employer shall have recourse for the amount thereof against his insurance carrier. But the insurance carrier shall be directly liable to the injured employee, or his dependents, in event of the death, insolvency, bankruptcy or other proceedings, as a result of which the conduct of the employer’s business may be and continue to be in the charge of an executor, administrator, receiver, trustee or assignee.

**34:15-83. Insurance contract for benefit of employees and dependents.** Every contract of insurance covering the liability of an employer for compensation to injured employees or their dependents, written by a stock company or a mutual association, shall provide, or be construed to provide, that it is made for the benefit of the several employees of the insured employer and their dependents, and that such contract may be enforced by any of such employees or their dependents, suing thereon in his or their names as though distinctly made party thereto.

**34:15-84. Enforcement of provisions.** Every such contract shall further provide, or be construed to provide, that any injured employee or his dependents may enforce the provisions thereof to his or their benefit, either by agreement with the employer and the insurance carrier, in event that compensation be settled by agreement, or by joining the insurance carrier with the employer in his petition filed for the purpose of enforcing his claim for compensation, or by subsequent application to the Superior Court, upon the failure of the employer, for any reason, to make adequate and continuous compensation payments.

**34:15-85. Knowledge of injury; jurisdiction.** Every such contract shall provide, or be construed to provide, that, as between the employee and the insurance carrier, the notice to or knowledge of the occurrence of the injury on the part of the employer shall be deemed notice or knowledge, as the case may be, on the part of the insurance carrier; that jurisdiction of the employer shall, for the purpose of this article, be jurisdiction of the insurance carrier, and that the insurance carrier shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the employer for the payment of compensation.

**34:15-86. Insurance carrier directly liable.** Every such contract shall provide, or be construed to provide, that, upon the death, insolvency or bankruptcy of the insured employer, or upon his assignment for the benefit of creditors, the insurance carrier shall immediately become directly liable for all compensation payments due to any injured employee or his dependents by virtue of prior agreement or award until completion thereof, or that may thereafter become due during the period for which the requisite premiums have been paid by the employer.

**34:15-87. Limitations and restrictions on liability.** No policy of insurance against liability arising under this chapter shall contain any limitation of the liability of the insurer to an amount less than that payable by the assured on account of his entire liability under this chapter, and no provision of such policy shall be construed to restrict the liability of the insurer to any stated business, plant, location, or employment carried on by an assured unless the business, plant, location, or employment excluded by such restriction shall be concurrently separately insured or exempted as provided for in this article.

No such policy of insurance or any indorsement thereon shall insure against any liability whatsoever other than the liability of the employer for compensation under this chapter and for damages imposed by law because of personal injuries, including death at any time resulting therefrom, sustained by his employees.

No action shall be maintained for the collection of premiums on any policy violating any provision of this article. Any policy issued contrary to the provisions of this section shall be construed as incorporating the provisions herein contained. No insurer shall, in action brought upon such policy, plead in defense of such action any provision of such policy which violates any provision of this section.

**34:15-88. Classification of risks, rates, schedules and rules; approval by insurance commissioner.** Every insurance company or mutual association which insures employers against liability either under this chapter or for damages imposed by law arising out of any other liability to employees because of personal injuries including death at any time resulting therefrom, or both, shall file with the commissioner of banking and insurance its classification of risks and premiums and rules pertaining thereto, together with the basis rates and system of merit or schedule rating applicable to such insurance which system of merit or schedule rating shall be applied as hereinafter provided. Neither classifications of risks, rules pertaining thereto, basis rates, nor system of merit or schedule rating shall take effect until the commissioner of banking and insurance shall have approved the classifications, rules, basis rates, and system of merit or schedule rating, as reasonable and adequate for the risks to which they respectively apply. The commissioner of banking and insurance may withdraw his approval of any classification, rule, basis rate, or system of merit or schedule rating if he shall find that such classification, rule, rate, or system of merit or schedule rating is unreasonable or inadequate for the risks to which they respectively apply. To secure the impartial application of such approved classifications, rules, rates, or system of merit or schedule rating, the commissioner of banking and insurance is hereby authorized to create, organize and supervise such rating and

rev. date January 17, 2010

inspection bureau with such jurisdiction under his supervision as hereinafter provided. No insurance company or mutual association writing workmen's compensation or employer's liability insurance in this state shall issue, renew, or carry any insurance against the liability of an employer either for compensation or for damages imposed by law, because of personal injuries, including death at any time resulting therefrom, sustained by his employees, or for both, except in accordance with the classifications, rules, basis rates, and system of merit or schedule rating approved by the commissioner of banking and insurance as aforesaid and applied by the rating and inspection bureau; provided, however, that any departure from the basis rate filed with and approved by the commissioner of banking and insurance on account of the application of a system of merit or schedule rating approved by the commissioner of banking and insurance shall be clearly set forth in the insurance contract or endorsements attached thereto. If any insurance company or mutual association authorized to write workmen's compensation or employer's liability insurance in this state shall violate any of the provisions of this act, the commissioner of banking and insurance, may, in his discretion, after public hearing, suspend the authority of said insurance company or mutual association to transact workmen's compensation or employer's liability insurance in this state for such period as said commissioner shall fix.

**34:15-89. Repealed on October 1, 2008 by L. 2008, c. 97, § 3**

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

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

rev. date January 17, 2010

"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.

This act shall take effect immediately.

L.1995, c.393, s.2; amended 2008, c.94, s.2.

### **34:15-90. Repealed on October 1, 2008 by L. 2008, c. 97, § 3**

#### **34:15-90.1 Compensation Rating and Inspection Bureau continued; directors, appointment, terms.**

a. The Compensation Rating and Inspection Bureau, established and continued by R.S.34:15-89, consisting of all insurers authorized to write workers' compensation or employers' liability insurance within this State as provided under R.S.34:15-90, is continued as provided by this act. No insurer shall write workers' compensation or employers' liability insurance in this State unless it is a member of the Compensation Rating and Inspection Bureau. Each member of the Compensation Rating and Inspection Bureau shall have one representative entitled to one vote in the administration of the Compensation Rating and Inspection Bureau's affairs.

rev. date January 17, 2010

b. The Compensation Rating and Inspection Bureau shall be governed by a committee of 10 directors. The Commissioner of Banking and Insurance or his designee shall serve as an ex-officio, non-voting director. Six directors of the governing committee shall be elected by the insurer members as provided in the approved plan of operation. Three directors shall be appointed by the commissioner: one of whom shall be an individual appointed from a list or lists of nominees provided by one or more recognized Statewide organizations representing licensed insurance producers; one of whom shall be an individual appointed from a list or lists of nominees provided by one or more recognized Statewide business organizations; and one of whom shall be an individual appointed from a list or lists of nominees provided by one or more recognized Statewide labor organizations.

Initially, two of the elected directors and one of the appointed directors shall serve for a term of three years; two of the elected directors and one of the appointed directors shall serve for a term of two years; and two of the elected directors and one of the appointed directors shall serve for a term of one year. Thereafter, all board members shall serve for a term of three years. Vacancies shall be filled in the same manner as the original selection.

#### **34:15-90.2 Authority of Compensation Rating and Inspection Bureau.**

The Compensation Rating and Inspection Bureau shall have authority to:

- a. Enter into contracts as are necessary or proper to carry out the provisions and purposes of this act;
- b. Sue or be sued, including taking any legal actions as may be necessary for recovery of any assessments;
- c. Establish rules, conditions, and procedures for assessment of its members;
- d. Assess members in accordance with chapter 15 of Title 34 of the Revised Statutes;
- e. Appoint from among its members appropriate legal, actuarial, and other subcommittees of the governing committee as necessary to provide technical assistance in the operation of the bureau;
- f. Establish and maintain rules, regulations and premium rates for workers' compensation and employers' liability insurance and equitably adjust the same, as far as practical, to the hazard of individual risks, by inspection by the bureau;
- g. Adopt means for assuring uniform and accurate audit of payrolls as they relate to policies of workers' compensation and employers' liability insurance by auditors, appointed by the bureau, or by such other means as the bureau may, with the approval of the commissioner, establish;
- h. Furnish upon request to any of its members or to any employer upon whose risks a rating has been promulgated by it, information as to such rating, including the method of its computation, and shall encourage employers to reduce the number and severity of accidents by adjusting premiums and rates through the use of credits and debits or other proper factors, under such uniform system of experience or other forms of merit rating as may be approved by the commissioner;
- i. Prepare and file, for the approval of the commissioner, and for the use by all of its members, any amendments to its policy forms and its system of classification of risks and premiums thereto, together with the basis rates and system of merit or

rev. date January 17, 2010

schedule rating applicable to such insurance, as currently set forth in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual;

j. Develop and submit, for the approval of the commissioner, any amendments to its rules of procedure as currently set forth in the New Jersey Workers' Compensation and Employers' Liability Insurance Manual;

k. Resolve disputes concerning the application of its rating system to specific cases, in accordance with the workers' compensation and employers' liability insurance policy and the bureau's rules of procedure, subject to appeal to the commissioner; and

l. Take such other actions as may be reasonable and necessary to carry out its functions as provided in its approved rules of procedures, or as directed by the commissioner.

**34:15-90.3 Effective date.**

This act shall take effect July 1, 2009, except that the Commissioner of Banking and Insurance may take such anticipatory administrative action in advance as shall be necessary for the orderly transition of the new Compensation Rating and Inspection Bureau and proper implementation of this act.

Approved October 1, 2008.

**34:15-91. Actuary and additional assistants in insurance department.** The Commissioner of Banking and Insurance is authorized to employ an actuary and necessary assistants and to fix their compensation, subject to the provisions of Title 11, Civil Service, except where otherwise provided by statute; to compel the production of all books, data, papers and records necessary for the actuary to compile statistics for determining the pure cost of workmen's compensation and employers' liability insurance; and to examine, either personally or through any person appointed by him, the pay roll records and workmen's compensation or employers' liability policies and all data relating to such records and policies of any employer subject to the provisions of this article in order to determine whether such provisions are being complied with.

The information in the possession of the actuary shall be available to the compensation rating and inspection bureau in fixing rates.

**34:15-92. Domestic help excepted.** Each employer of domestic servants or household employees and every stock company or mutual association affording insurance for the liability of such employers by reason of that employment shall be exempted from the provisions of R.S. 34:15-79 and R.S. 34:15-80. The provisions of R.S. 34:15-81 shall not be applicable where the insurance coverage is afforded pursuant to P.L. 1979, c. 380.

**34:15-92.1. Other exceptions.** If and when any class or classes of employers or employees shall be excepted from the provisions of article 2 of this chapter (§ 34:15-7 et seq.) by an act or acts of the legislature, such employers as may be thereby excepted shall, from the date when such act or acts shall become effective, be likewise excepted from the provisions of this article.

rev. date January 17, 2010

**34:15-93. Expense of enforcement; payments by insurers.** To defray the expenses of the Commissioner of Banking and Insurance in carrying out the provisions of this article, each mutual association and each stock company writing workmen's compensation or employers' liability insurance in this state shall annually on or before the first day of June of each year pay to the state tax commissioner for the use of the state a sum equal to one-quarter of one per cent of the net premiums received by it for workmen's compensation and employers' liability insurance written or renewed by it on risks within the state as reported to the Commissioner of Banking and Insurance for the calendar year next preceding the due date of such payment.

The Commissioner of Banking and Insurance shall annually on or before June first of each year ascertain and report to the state tax commissioner all facts necessary to enable the latter to determine, fix and collect all sums payable under this section.

**34:15-94. Annual surcharge upon all policyholders and self-insured employers; annual report of total compensation payments and earned premiums; apportionment, determination and collection of surcharges; penalties; use of funds.**

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 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 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.2002, c.12 and pursuant to P.L. 2002, c. 38 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

rev. date January 17, 2010

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,” N.J.S. 2A:58-1 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 monies 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.

**34:15-95. Second injury fund; compensation payments for subsequent permanent injuries; persons eligible; time for payments; costs of administration, expenses, etc.; accounting to State Treasurer.** The sums collected under R.S. 34:15-94 shall constitute a fund, to be known as the Second Injury Fund, out of which a sum shall be set aside each year by the Commissioner of Labor from which compensation payments in accordance with the provisions of paragraph (b) of R.S. 34:15-12 shall be made to persons totally disabled, as a result of experiencing a subsequent permanent injury under conditions entitling such persons to compensation therefor, when such persons had previously been permanently and partially disabled from some other cause; provided, however, that, notwithstanding the time limit fixed therein, the provisions of paragraph (b) of R.S. 34:15-12 relative to extension of compensation payments beyond 400 or 450 weeks, as the case may be, shall, with respect to payments from the Second Injury Fund, apply to any accident occurring since June 27, 1923, and in no case shall be less than \$5.00 per

week; provided further, however, that no person shall be eligible to receive payments from the Second Injury Fund:

(a) If the disability resulting from the injury caused by the person's last compensable accident in itself and irrespective of any previous condition or disability constitutes total and permanent disability within the meaning of this Title.

(b) (Deleted by amendment.)

(c) If the disease or condition existing prior to the last compensable accident is progressive and by reason of such progression subsequent to the last compensable accident renders the person totally disabled within the meaning of this Title.

(d) If a person who is rendered permanently partially disabled by the last compensable injury subsequently becomes permanently totally disabled by reason of progressive physical deterioration or preexisting condition or disease.

Nothing in the provisions of said paragraphs (a), (c) and (d), however, shall be construed to deny the benefits provided by this section to any person who has been previously disabled by reason of total loss of, or total and permanent loss of use of, a hand or arm or foot or leg or eye, when the total disability is due to the total loss of, or total and permanent loss of use of, two or more of said major members of the body, or to any person who in successive accidents has suffered compensable injuries, each of which, severally, causes permanent partial disability, but which in conjunction result in permanent total disability. Nor shall anything in paragraphs (a), (c) and (d) aforesaid apply to the case of any person who is now receiving or who has heretofore received payments from the Second Injury Fund.

Upon the approval of an application for benefits, the compensation payable from the Second Injury Fund shall be made from the date when the final payment of compensation by the employer is or was payable for the injury or injuries sustained in the employment wherein the employee became totally and permanently disabled; provided, that no payment from the Second Injury Fund shall be made for any period prior to the date of filing of application therefor; provided, however, that a person who has received compensation payments from the Second Injury Fund and who is reinstated or ordered placed on said fund shall receive payments from the date of last payment from the Second Injury Fund, save only in the case of a person to whom payments have been made and then discontinued or suspended because of the rehabilitation of such person in accordance with the provisions of paragraph (b) of R.S. 34:15-12, or actual employment for any reason whatsoever, in which case payments from the Second Injury Fund shall be made from the date of filing application for reinstatement. Payments to such totally disabled employees shall be made from said fund by the State Treasurer upon warrants of the Commissioner of Labor. This section shall be applicable to any accident occurring since June 27, 1923, insofar as the eligibility of and benefits payable to such employees of this class is concerned; provided, however, that nothing contained herein shall limit or deprive those persons now receiving or who have received the benefits under this section from participating in the Second Injury Fund. All payments from the Second Injury Fund shall be made by biweekly installment payments. From the fund herein created the Commissioner of Labor may use in any one fiscal year a sum not to exceed the sum of \$12,500.00 for the cost of administration of the fund including personnel, printing,

rev. date January 17, 2010

professional fees, and expenses incurred by the Commissioner of Labor in the prosecution of defenses in the Division of Workers' Compensation, and of appeals and proceedings for review of decisions on applications for benefits from the Second Injury Fund. No costs or counsel fee for the applicant shall be allowed against the fund.

The Commissioner of Labor shall annually submit an accounting of the fund to the State Treasurer.

All payments into the Second Injury Fund which may have heretofore been made or required at any time or times are hereby validated and confirmed, notwithstanding that at the time of such payment or payments the fund may have equaled or exceeded the sum of \$200,000.00.

**34:15-95.1. Application for benefits; decision; review; Commissioner of Labor as party.** Applications for benefits under this act shall be made by a verified petition filed in duplicate within 2 years after the date of the last payment of compensation by the employer or the insurance carrier addressed to the Commissioner of Labor who shall refer it to a judge of compensation to hear testimony and for a decision as to whether the petitioner shall or shall not be admitted to the benefits provided under this act; provided, however, that the limitation herein shall not apply to those persons now receiving or who have received compensation payments from said fund and whose accident occurred since June 27, 1923. Review of said decision shall be in accordance with R.S. 34:15-66. In all proceedings affecting the fund under this act the Commissioner of Labor shall be a necessary party.

**34: 15-95.2. Vested rights.** No person shall be deemed to acquire or to have acquired any vested rights, under the provisions of this section. L. 1940,c.133, p.291, §3.

**34:15-95.3. Application of chapter; exemption of mutual agricultural insurance companies.** Nothing in this article (§ 34:15-70 et seq.) shall apply to any mutual agricultural insurance company incorporated under chapter 252 of the laws of 1905, being "A supplement to an act entitled 'An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State,' approved April 3, 1902," so long as any such company continues to confine the issuance of its policies of insurance to persons engaged in agricultural pursuits.

**34:15-95.4. Special adjustment benefit payment; dependent benefits; payment period; amount; supplement.** Any employee or dependent receiving weekly benefits as provided under R.S. 34:15-95, R.S. 34:15-12(b) or R.S. 34:15-13 at a rate applicable prior to January 1, 1980, and whose payment is less than the maximum compensation rate in effect for the year 1980, shall be entitled to receive a special adjustment benefit payment from the Second Injury Fund and from those sources as provided for by this 1980 amendatory and supplementary act.

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

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

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

The amount of the special adjustment benefit payment shall be such that when added to the workers' compensation rate awarded pursuant to R.S. 34:15-95, R.S. 34:15-12(b), R.S. 34:15-13 or this section as a result of injury or death, the total shall bear the same percentage relationship to the 1980 maximum workers' compensation rate that the worker's own compensation rate awarded as a result of the injury or death bears to the then effective maximum workers' compensation rate. The amount of the special adjustment benefit shall be payable at a rate of 35% of the adjustment during the fiscal year 1981 commencing July 1, 1980; 75% of the adjustment during the fiscal year 1982; and 100% of the adjustment during the fiscal year 1983 and thereafter. The special adjustment benefit payment provided herein shall be reduced by an amount equal to the individual's benefit payable under the Federal Old-Age, Survivors' and Disability Insurance Act (not including increases in such benefits due to any federal statutory increases after May 31, 1980),<sup>13</sup> Black Lung benefits,<sup>14</sup> or the employer's share of disability pension payments received from or on account of an employer. Where any person refuses to authorize the release of information concerning the amount of benefits payable under the aforementioned benefits, the division's estimate of that amount shall be deemed to be correct unless and until the actual amount is established and no adjustment shall be made for any period of time covered by any such refusal.

Payments of the adjustment shall be made from the Second Injury Fund in the manner hereinafter provided. The Commissioner of Labor shall make payments from Second Injury Fund directly to the persons who are now receiving benefits under R.S. 34:15-95 and to their dependents becoming eligible for dependents' benefits under this 1980 amendatory and supplementary act by increasing or, as the case may be, setting the biweekly compensation payments to include the biweekly special adjustment. In the case of persons who are entitled to compensation under R.S. 34:15-12(b) or R.S. 34:15-13, the insurance carrier or self-insured employer in the second and subsequent fiscal years after enactment shall increase the weekly compensation payments to include the weekly

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<sup>13</sup> 42USCA § 402 et seq.

<sup>14</sup> 42USCA § 931 et seq.

special adjustment. For such special adjustment payments and supplements to special adjustment payments paid during the period July 1, 1981 and December 31, 1988, insurance carriers and self-insured employers shall credit the payments against the assessments payable by the insurance carrier or self-insurer under R.S. 34:15-94. The insurance carrier or self-insurer claiming such credit shall submit vouchers upon forms prescribed by the Commissioner of Labor, identifying each case and indicating the weekly benefit adjustment applicable thereto on or before June 30, 1989.

Beginning in the fiscal year 1984 and in every fiscal year thereafter, a supplement to the special adjustment benefit payment shall be paid to all employees or dependents entitled to the special adjustment benefit payment. The supplement to the special adjustment benefit payment shall be paid in an amount, in combination with income from all sources referred to in this section, which bears the same percentage relationship to the then current maximum workers' compensation rate that the worker's own compensation rate awarded as a result of the injury or death bears to the then effective maximum workers' compensation rate. Beginning in fiscal year 1986 and in every fiscal year thereafter, payment of supplements to the special adjustment benefits shall be made from the Second Injury Fund. Payment of supplements to the special adjustment benefits for fiscal years 1984 and 1985 shall be from interest earned and accrued upon moneys belonging to "the stock workers' compensation security fund" and "the mutual workers' compensation security fund" during fiscal years 1981 through 1985, and from special assessments upon self-insured employers in the same proportions as provided under R.S. 34:15-94.

**34:15-95.5. Reduction of disability benefits for persons under age sixty-two; exception.** For persons under the age of 62 receiving benefits as provided under R.S. 34:15-95 or R.S. 34:15-12(b), and whose period of disability began after December 31, 1979, such compensation benefits shall be reduced by an amount equal to the disability benefits payable under the Federal Old-Age, Survivors' and Disability Insurance Act, as now or hereafter amended,<sup>15</sup> not to exceed the amount of the reduction established pursuant to 42 USCA § 424(a). However, such reduction shall not apply when the combined disability benefits provided under R.S. 34:15-95 or R.S. 34:15-12(b), and the Federal Old-Age, Survivors' and Disability Insurance Act is less than the total benefits to which the Federal reduction would apply, pursuant to 42 USCA § 424(a). Where any person refuses to authorize the release of information concerning the amount of benefits payable under said Federal act, the division's estimate of said amount shall be deemed to be correct unless and until the actual amount is established, and no adjustment shall be made for any period of time covered by any such refusal.

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<sup>15</sup> 42USCA § 401 et seq.

## **Article 6. REPORTS BY EMPLOYERS AND INSURERS**

**34:15-96. First report of accident.** Every employer who has made provisions for payment of obligations to an injured employee as required by article 5 of this chapter (R.S. 34:15-70 et seq.) shall, upon the happening of any accident or the occurrence of any compensable occupational disease in its establishment, promptly furnish the insurance carrier, or the third party administrator, if applicable, with information necessary to enable it to carry out the intent of this chapter. Within three weeks after learning of an accident, or obtaining knowledge of the occurrence of a compensable occupational disease, every insurance carrier, third party administrator, statutory non-insured employer, including the State, county, municipality or school district, and duly authorized self-insured employer not utilizing a third party administrator shall file a report designated as "first notice of accident" in electronic data interchange media with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in a format prescribed by the Compensation Rating and Inspection Bureau with a report sent to the employer. The reports, if filed through interim vendors, shall not be used for any purpose other than formatting and transmitting this information to the Compensation Rating and Inspection Bureau and the Division of Workers' Compensation. For purposes of this section, "interim vendor" means a software supplier, network service provider, programming consultants or an insurance support organization, except that an insurance support organization may disclose the information to prevent the misrepresentation or nondisclosure of information which is material to an insurance claim.

If the employer disagrees with the report, the employer may prepare and sign an amended report and file it with the insurance carrier, or third party administrator, if applicable. Any resultant change shall be filed by the insurance carrier, or third party administrator, if applicable, with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau as provided for in this section.

The Compensation Rating and Inspection Bureau shall make provisions to insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S. 34:15-99.

**34:15-97. Report by employer not carrying insurance.**

Repealed on January 5, 2002 by L. 2001, c. 326, § 10

**34:15-98. Final report of accident.** Not more than 26 weeks after an insurance carrier, third party administrator, self-insured employer or statutory non-insured employer learns that an employee has recovered so as to be able to resume work or has reached maximum medical improvement prior to resumption of work, the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer shall prepare a final report, and take the steps necessary to have it copied to the employee. The report shall be transmitted to the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner prescribed in R.S.34:15-96. This report shall

rev. date January 17, 2010

be fully prepared before presentation to the employee. It shall be unlawful to present any injured employee with a blank report to be later filled out and filed with the Compensation Rating and Inspection Bureau.

If the employee disagrees with the report, the employee may forward written objections directly to the Division of Workers' Compensation with a copy to the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer, if applicable. Any resultant change to the final report shall be filed by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer with the Division of Workers' Compensation through the Compensation Rating and Inspection Bureau in the manner prescribed in R.S. 34:15-96.

The report shall be retained by the insurance carrier, third party administrator, self-insured employer or statutory non-insured employer for 10 years. Any written objections forwarded by an employee to the Division of Workers' Compensation pursuant to this section shall be retained by the division for 10 years.

The Compensation Rating and Inspection Bureau shall insure that information received pursuant to this section shall be readily available to the Division of Workers' Compensation or any person authorized by the Commissioner of Labor pursuant to R.S. 34:15-99.

**34:15-99. Report not public.** The reports of accidents filed with, or transmitted or forwarded to, the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau, shall not be made public, and shall not be open to inspection unless, in the opinion of the Commissioner of Labor, some public interest shall so require, and such reports shall not be used as evidence against any employer in any suit or action at law brought by an employee for the recovery of damages.

**34:15-100. Medical reports.** As a part of the necessary medical service required by the compensation law, the employer or insurance carrier shall, when directed so to do, file with the workmen's compensation bureau copies of such medical certificates or reports as it may have on file.

**34:15-101. Penalty for noncompliance.** Every employer, insurer or other person failing to comply with the terms of this article shall, for each offense, be liable to a penalty of not less than ten nor more than fifty dollars, the amount thereof to be determined by and paid to the commissioner of labor. Upon refusal to pay such fine, the same shall be recovered in an action at law by the commissioner of labor in the name of the state of New Jersey.

**34:15-102. Rules and regulations; agreements filed.** The workmen's compensation bureau is authorized to make such rules and regulations as may be necessary to carry out the purpose of this article and the bureau is hereby directed to keep on file the agreements filed with it for a period of eight years. Any agreement, however, covering a period greater than eight years shall be kept on file for the full term of the agreement.

rev. date January 17, 2010

## Article 7. INSOLVENT INSURANCE CARRIERS; SECURITY FUNDS

**34:15-103. Short title.** This article may be cited as the workers' compensation security fund act.

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

"Stock fund" means the stock workers' compensation security fund created by this article.

"Mutual fund" means the mutual workers' compensation security fund created by this article.

"Funds" means the stock fund and the mutual fund.

"Fund" means either the stock fund or the mutual fund as the context may require.

"Fund year" means the calendar year.

"Stock carrier" means any stock corporation authorized to transact the business of workers' compensation insurance in this State, except an insolvent stock carrier.

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

"Carrier" means either a stock carrier or a mutual carrier, as the context may require.

"Insolvent stock carrier" or "insolvent mutual carrier" means a stock carrier or a mutual carrier, as the case may be, 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.

"Compensation," "benefits," "death benefits," and "payments of losses" means payments 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. § 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.

**34:15-105. Stock workers' compensation security fund;** creation; purposes; source of funds; administration; claims under federal Longshore and Harbor Workers' Compensation Act. There is hereby created a fund to be known as "the stock 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. § 401 et seq.), or both for employments insured in insolvent stock 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 this 1980 amendatory and supplementary act. 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. § 401 et seq.), and remaining unpaid, in whole or in part, by reason of the default, after March 26, 1935, of an insolvent stock 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 stock 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 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. § 401 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. § 901 et seq.)

**34:15-106. Returns by stock carriers;** "net written premiums," defined. Every stock carrier shall, on or before September 1, 1935, file with State Treasurer and with the Commissioner of 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. § 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.

**34:15-107. Contributions to stock fund.** For the privilege of carrying on the business of workmen's compensation insurance in this state, every stock carrier shall pay into the stock 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 such stock carrier, upon filing each semiannual return, shall pay a sum equal to one per cent of its net written premiums for the period covered by such return.

**34:15-108. Contributions to stock fund to cease when fund equals five per cent of loss reserves;** resumption of contributions; fluctuation of rates by regulation. When the aggregate amount of all such payments into the stock fund, together with accumulated interest thereon, less all its expenditures and known liabilities, becomes equal to 5% of the loss reserves of all stock 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. § 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

rev. date January 17, 2010

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 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 Insurance may by regulation provide that the amount of the stock fund may fluctuate between 3% and 5% of loss reserves of all stock carriers whenever he finds it to be in the best interest of the fund or advisable for its proper administration; except that no regulation shall require a stock carrier to make an additional contribution to the stock fund during the 12 month period following the effective date of this amendatory and supplementary act.

**34:15-109. Regulations;** examination of correctness of returns; penalties. The Commissioner of Banking and Insurance may adopt, amend and enforce rules and regulations necessary for the proper administration of the stock fund. In the event any stock carrier shall fail to file any return or make any payment required by this article, or in case the Commissioner of Banking and Insurance 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 stock carrier which fails to make any statement as required by this act, or to pay any contribution to the stock 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 this act 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 of Banking and Insurance may upon good cause shown extend the time for filing of such return or payment. The Commissioner of Banking and Insurance 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.

**34:15-110. Fund kept separate;** investment; treasurer may sell securities. The stock fund created by this act 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.

**34:15-111. Payment of claims on application therefor;** fund may recover against insurance carrier but not from employer. A valid claim for compensation or death benefits, or installments thereof, heretofore or hereafter made pursuant to this chapter or

rev. date January 17, 2010

the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. § 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 stock carrier, shall be paid from the stock fund in the manner provided in this section. Any person in interest may file with the Commissioner of Insurance an application for payment of compensation or death benefits from the stock 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.

Payment of compensation from the stock fund shall give the fund no right of recovery against the employer.

An employer may pay such award or part thereof in advance of payment from the stock fund and shall thereupon be subrogated to the rights of the employee or other party in interest against such fund to the extent of the amount so paid.

The State Treasurer as custodian of the stock 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 stock fund by the State Treasurer to reimburse the stock fund to the extent of the moneys so recovered and paid.

**34:15-112. Mutual fund created;** how derived; supplement to special benefit adjustment payment; claims arising under federal Longshore and Harbor Workers' Compensation Act. There is hereby created a fund to be known as "the mutual workers' compensation security fund," for the purpose of assuring to persons entitled thereto the compensation provided by the workers' compensation act, R.S. 34:15-1 et seq., or the federal "Longshore and Harbor Workers' Compensation Act," 44 Stat. 1424 (33 U.S.C. § 901 et seq.), or both for employments insured in insolvent mutual 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 this 1980 amendatory and supplementary act. 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. § 901 et seq.), and remaining unpaid, in whole or in part, by reason of the default, after the effective date of this act, of an insolvent mutual 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 mutual carriers, as herein defined, of 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 Insurance in accordance with the provisions of this article.

rev. date January 17, 2010

Compensation pursuant to the federal “Longshore and Harbor Workers’ Compensation Act,” 44 Stat. 1424 (33 U.S.C. § 901 et seq.), shall be payable only with respect to coverage of 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. § 901 et seq.).

**34:15-113. Returns by mutual carriers;** “net written premiums,” defined. Every mutual carrier shall, on or before September 1, 1935 file with the State Treasurer and with the Commissioner of 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. § 901 et seq.), as authorized by this article during said period. For the purpose of this act “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’ periods ending, respectively, on the preceding December 31st and June 30th, on such policies issued, renewed or extended by such carrier.

**34:15-114. Contributions to mutual fund.** For the privilege of carrying on the business of worker’s compensation insurance in this state, every mutual carrier shall pay into the mutual fund on the first day of September, one thousand nine hundred and 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 thirty-five, and thereafter each such mutual carrier, upon filing each semi-annual return, shall pay a sum equal to one per cent of its net written premiums as shown for the period covered by such return.

**34:15-115. Contributions to mutual fund to cease where fund exceeds five per cent of loss reserves;** resumption of contributions; fluctuation of rates by regulation; distribution of balance after liquidation of all liabilities. Whenever the mutual fund, less all its known liabilities, shall exceed 5% of the loss reserves of all mutual carriers for the payments of losses under this chapter or the federal “Longshore and Harbor Workers’ Compensation Act,” 44 Stat. 1424 (33 U.S.C. § 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 Insurance, and shall 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 Insurance may by regulation provide that the amount of the mutual fund may fluctuate between 3% and 5% of loss reserves of all mutual carriers whenever he finds it to be in the best interest of the fund or advisable for its proper administration; except that no regulation shall require a mutual carrier to make an additional contribution to the mutual fund during the 12 month period following the effective date of this amendatory and supplementary act. If and when all liabilities of all mutual carriers for workers' compensation losses in this State shall have been fully liquidated, distribution shall be made of the remaining balance of the mutual fund in the proportion in which each such mutual carrier made contributions to the mutual fund.

**34:15-116. Certain stock fund regulations applicable to mutual fund.** The provisions of sections 34:15-109 to 34:15-111 of this article shall apply, mutatis mutandis, to the administration, custody and investment of and payments from the mutual fund.

**34:15-117. Insolvency of stock or mutual carrier;** notice to worker's compensation bureau; report of conditions. Forthwith upon any carrier becoming an insolvent stock carrier, or an insolvent mutual carrier, as the case may be, the commissioner of banking and insurance shall so notify the workmen's compensation bureau, and the workmen's compensation bureau shall immediately advise the commissioner of banking and insurance (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.

**34:15-118. Powers and duties of commissioner of banking and insurance with respect to compensation claims.** The Commissioner of Banking and Insurance or his duly authorized representative may investigate and may defend before the worker's compensation bureau 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 of banking and insurance as administrator of the funds, shall be a party in interest in respect to all such claims, agreements and awards. For the purposes of this act such 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 appropriate fund, such carrier or carriers for compensation payments so made together with reasonable allowance for the services so rendered.

**34:15-119. Administration expenses;** report to legislature. The expense of administering the stock fund shall be paid out of the stock fund and the expense of administering the

rev. date January 17, 2010

mutual fund shall be paid out of the mutual fund. The Commissioner of Banking and Insurance shall serve as administrator of each fund without additional compensation, but may be allowed and paid from either fund expenses incurred in the performance of his duties in connection with that fund. The compensation of those persons employed by such commissioner shall be deemed administration expenses payable from the fund in the manner provided in paragraph eight of this act. Such commissioner shall include in his regular report to the legislature a statement of the expense of administering each of such funds for the preceding year.

**34:15-120. No deposit of securities required by contributing carriers.** Contributions made by any stock or mutual carrier to the funds created by this act 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 worker's compensation benefits.

## Article 7A. UNINSURED EMPLOYER'S FUND

**34:15-120.1. Creation; administration, maintenance and disbursement; penalties on employers.** a. There is hereby created a fund which shall be known as the "uninsured employer's fund" to provide for the payment of awards against uninsured defaulting employers who fail to provide compensation to employees or their beneficiaries in accordance with the provisions of the workers' compensation law, R.S. 34:15-1 et seq.

The fund shall be administered, maintained, and disbursed by the Commissioner of Labor as hereinafter provided.

b. (1) For the purpose of establishing and maintaining this fund, the Commissioner of Labor shall impose on January 1, 1989 and on the first day of each year thereafter, except as provided below, an annual surcharge upon each workers' compensation policyholder and employer's liability insurance policyholder and each self-insured employer insured pursuant to R.S. 34:15-77. Each workers' compensation and employer's liability insurance 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 thereto. The annual surcharge imposed under this section shall apply to all workers' compensation and employer's liability insurance policies written or renewed or, in the case of self-insured employers, to coverage provided on or after January 1, 1989. However, the surcharge 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).

If the Commissioner of Labor determines, pursuant to paragraph (2) of this subsection b., that the "uninsured employer's fund" will have to its credit a sum in excess of \$500,000.00 at the end of any calendar year, the annual surcharge shall be suspended for the next following year and its collection not resumed until the calendar year immediately following any calendar year in which the balance in the fund is reduced below \$500,000.00.

(2) For the calendar year 1989, the total amount of the surcharge levied by the commissioner shall be \$500,000.00. On September 1 of 1989 and of each year thereafter, the Commissioner of Labor shall estimate the amount of benefits that have been paid and will be paid from the "uninsured employer's fund" during that calendar year, and shall calculate in consultation with the Commissioner of Insurance, the total amount of the annual surcharge for the "uninsured employer's fund" to be levied during the next following calendar year upon all workers' compensation and employer's liability insurance policyholders and self-insured employers pursuant to paragraph (1) of this subsection b. The total amount of the annual surcharge shall equal 150% of the moneys estimated by the Commissioner of Labor to be payable from the "uninsured employer's fund" during the calendar year preceding the year during which the annual surcharge will be imposed.

rev. date January 17, 2010

(3) The total amount of the annual surcharge calculated pursuant to paragraph (2) of this subsection b. shall be added to the aggregate annual surcharge amount to be levied upon and apportioned among all workers' compensation and employer's liability policyholders and self-insured employers pursuant to R.S. 34:15-94, and be levied and apportioned in the same manner as the annual surcharge for the Second Injury Fund as provided in R.S. 34:15-94. The surcharge to be collected from policyholders and self-insured employers pursuant to this section shall, however, be stated separately on the policy or billing statement and the amount of the surcharge as applied pursuant to this section shall not be subject to reduction for special adjustment and supplemental benefits paid or payable under the workers' compensation law, R.S. 34:15-1 et seq.

(4) As used in this subsection, "policyholder" means a holder of a workers' compensation and employer's liability insurance policy issued by an insurer that is 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). "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.

(5) All moneys collected pursuant to this section shall be deposited in the "uninsured employer's fund." Collection of the annual surcharge shall be under the authority of the Commissioner of Labor as defined in R.S. 34:15-94.

c. The Director of the Division of Workers' Compensation upon rendering a decision with respect to any claim for compensation under chapter 15 of Title 34 of the Revised Statutes that the employer liable therefor has failed to secure the payment of compensation with respect to a claim in accordance with R.S. 34:15-71 OR R.S. 34:15-72, shall impose a penalty of \$1,000.00 against the employer and direct its payment into the "uninsured employer's fund" in connection with each such claim. The director shall also impose an additional assessment of 15% of the award or awards made in each claim. This additional assessment shall not exceed, however, the sum of \$5,000.00 on any one claim, and shall be paid into the "uninsured employer's fund."

If the employer fails to pay these assessments into the fund within 10 days after date of mailing of notice thereof to him, this shall constitute a default in payment of compensation due pursuant to the provisions of the workers' compensation law, R.S. 34:15-1 et seq., and judgment therefor shall be entered in accordance therewith.

All sums collected from an uninsured defaulting employer with respect to any claim for compensation referred to in this section but not payable from the fund, whether such collection is made prior or subsequent to entry of judgment against the employer, shall be deemed in payment of and applicable first in satisfaction of any compensation and benefits due from the employer with respect to the claim and security demand, if any, in connection therewith and only when the obligations are satisfied in full shall the balance of said sums collected, if any, be deemed payment in satisfaction of and applicable to the assessments above prescribed in this section.

All sums recovered from uninsured defaulting employers on judgments entered for failure to pay assessments as hereinafter provided and for failure to pay compensation and benefits which were paid from the “uninsured employer’s fund,” shall upon recovery be paid into that fund.

**34:15-120.2. Award payable and benefit payments out of fund.** a. In any case in which a claim for compensation is filed pursuant to the provisions of the workers’ compensation law, R.S. 34:15-1 et seq., and the employer has failed to secure the payment of compensation as required by R.S. 34:15-71 or R.S. 34:15-72 and to make payment of compensation according to the terms of any award within 45 days thereafter and fails or refuses to deposit with the director within 10 days after demand the commuted or estimated value of the compensation payable under the award as security for prompt and convenient payment of compensation periodically as it accrues, then , unless a notice of appeal has been timely filed, the award shall be payable out of the “uninsured employer’s fund.”

b. Benefit payments from the “uninsured employer’s fund” may include:

- (1) Compensation for reasonable medical expenses covered by the workers’ compensation law, R.S. 34:15-1 et seq.; and
- (2) Compensation for temporary disability as provided in subsection a. of R.S. 34:15-12.

c. Benefit payments from the “uninsured employer’s fund” shall not include:

- (1) Any compensation not included in the award or judgment upon which a claim against the fund is made;
- (2) Extra compensation or death benefits pursuant to R.S. 34:15-10.

d. Temporary disability benefits paid from the “uninsured employer’s fund” shall be offset or reduced by an amount equal to the amount of disability benefits received by the claimant pursuant to the federal “Old-Age, Survivors’ and Disability Insurance Act” (42 U.S.C. AND 401 et al.).

e. Benefits shall be paid to a claimant from the “uninsured employer’s fund” only if the claimant: (1) was, at the time of the injury or death, an employee performing service for an employer outside of casual employment as defined in R.S. 34:15-36; and (2) did not recover full compensation for reasonable medical expenses and temporary disability benefits from the uninsured defaulting employer.

**34:15-120.3. Default by uninsured employer; judgment.** The director, in any case in which an award of compensation payable by an uninsured employer or an assessment has been ordered by the director, shall file with the Clerk of the Superior Court, (1) a statement containing the findings of fact, conclusions of law, award and judgment of the judge making the award, or (2) a certified copy of the director's order imposing, and the demand for payment of, the assessment, and, the filing of that statement or order, as the case may be, shall have the same effect and may be collected and docketed in the same manner as judgments rendered in causes tried in the Superior Court. The court shall vacate or modify such judgment to conform to any later award or decision by any authorized officer of the division upon presentation of a statement thereof as provided for above. The award may be compromised by the Commissioner of Labor and Workforce Development as in his discretion may best serve the interest of the persons entitled to receive the compensation or benefits.

rev. date January 17, 2010

(cf: P.L.1966, c.126, s.12)

**34:15-120.4. Payments upon application and approval by commissioner;** review; employees; legal counsel. a. After an award has been entered against an employer for compensation under any provision of the workers' compensation law, R.S. 34:15-1 et seq., and the Director of the Division of Workers' Compensation has filed an order for payment of compensation and assessments with the Clerk of the Superior Court pursuant to section 12 of P.L. 1966, c. 126 (C. 34:15-120.3) as a result of the employer's failure to provide lawful compensation, the claimant may apply to the Commissioner of Labor for compensation from the "uninsured employer's fund" in accordance with the procedures established by the Commissioner of Labor pursuant to section 16 of P.L.1966, c. 126 (C. 34:15-120.7).

b. The Commissioner of Labor is charged with the conservation of the assets of the "uninsured employer's fund." Notwithstanding the provisions of any other section of this act, no payments shall be made from the fund except upon application to and approval by the commissioner. Review of any decision by the commissioner shall be in accordance with R.S. 34:15-66 .

c. The Commissioner of Labor shall have the authority to establish rules for the review of claims against the "uninsured employer's fund" and hire and reimburse medical and other expert witnesses that are necessary to a proper conservation and defense of the moneys in the fund.

d. Upon being notified by the Commissioner of Labor that a decision of the commissioner regarding claims against the "uninsured employer's fund" is being appealed pursuant to R.S. 34:15-66, the Attorney General, or his designee, shall defend the fund.

e. The Commissioner of Labor may also employ such employees as may be required to maintain and conserve the "uninsured employer's fund," and may also employ legal counsel to represent the fund and conduct investigations on behalf of the fund.

**34:15-120.5. Subrogation;** right of fund against employer. To the extent of the compensation and benefits paid or payable to an employee or his dependents from the uninsured employers' fund, the fund, by subrogation, shall be entitled to all the rights, powers and benefits of the employee or his dependents against the employer arising under the provisions of chapter 15 of Title 34 of the Revised Statutes;<sup>16</sup> and in any case or situation contemplated by section 34:15-40 of the Revised Statutes, the fund, shall have the same rights as the employer.

**34:15-120.6. Annual accounting by commissioner; payments upon warrants.** The commissioner shall annually submit an accounting of the "uninsured employer's fund" to the State Treasurer and to the appropriations and labor committees of both houses of the State Legislature. The report to the Legislature shall include the following information: an estimate of the total amount of benefits paid from the fund in the preceding calendar year; an estimate of the benefits that may be paid from the fund in the current calendar

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<sup>16</sup> N.J.S.A. 34:15-1 et seq.

year; a determination of the average cost to employers in the State, on a per employee basis, of providing benefits through the “uninsured employer’s fund;” and a determination of the amount of money drawn from the fund during the preceding calendar year for administrative purposes pursuant to section 8 of P.L.1988, c. 25 (C. 34:15-120.10). Payments to applicants from the fund shall be made by the State Treasurer upon warrants of the Commissioner of Labor.

**34:15-120.7. Rules and regulations.** The commissioner may make all rules and regulations necessary for the processing and payment of compensation out of the “uninsured employer’s fund.”

The commissioner shall promulgate, in accordance with the “Administrative Procedure Act,” P.L.1968, c. 410 (C. 52:14B-1 et seq.), regulations to establish and administer an application and review process for claims made against the fund.

**34:15-120.8. Limited liability.** The liability of the “uninsured employer’s fund” and the State with respect to payment of any compensation, benefits, expenses, fees for disbursements properly chargeable against the fund shall be limited to the assets in the fund as exceed \$50,000.00, and the fund and the State shall not otherwise in any way or manner be liable for the making of any such payment.

**34:15-120.9. Action against employer to recover damages or costs for unpaid compensable injury or death.** If an employer fails to provide compensation to an employee or his beneficiaries as required by chapter 15 of Title 34 of the Revised Statutes, the employee, who has sustained a compensable injury or died as a result of his employment, or his beneficiaries may bring an action against the employer to recover all or part of any damages and costs sustained by the employee for any injury or death which has been deemed compensable under the workers’ compensation law, R.S. 34:15-1 et seq., and for which the employee or his estate has not received compensation from the “uninsured employer’s fund.”

**34:15-120.10. Administrative expenses; payment from fund.** In any fiscal year during which benefit payments are made from the “uninsured employer’s fund,” the Commissioner of Labor shall apply an amount equal to \$100.00 for each employee to whom such benefits have been paid from the fund toward the expenses of the Department of Labor arising from the administration of those benefit payments and the fund. However, the total amount withdrawn from the fund to cover administrative expenses shall not exceed \$10,000.00 during any fiscal year.

**34:15-120.11. Benefit payments to eligible individuals and payments under workers' compensation law made by liable persons;** enforcement. Notwithstanding the provisions of any other law, the Division of Workers' Compensation shall use every available administrative means to ensure that benefit payments from the "uninsured employer's fund" are paid only to individuals who meet the eligibility requirements of the workers' compensation law, R.S. 34:15-1 et seq., and that persons who are required to make payments pursuant to the workers' compensation law have provided lawful compensation and paid any penalty, fine, or assessment imposed pursuant to that law.

**34:15-120.12. Notice in writing by claimant of change in income that may affect eligibility for benefits;** recovery of payment procured by fraud, mistake or unreported change in income. The burden shall be upon the claimant to immediately notify in writing the Director of the Division of Workers' Compensation of any increase or decrease in his income that may affect his eligibility for benefits payable from the "uninsured employer's fund." 10 days after notice has been given to the claimant and the Attorney General, the director may modify or terminate an award payable from the fund as conditions may require. Any payment to a claimant pursuant to this 1988 amendatory and supplementary act which is later determined by the Commissioner of Labor to have been procured by fraud, mistake, or an unreported change in condition, shall be recovered from the claimant and deposited in the fund.

**34:15-120.13. Exhaustion of remedies at law against uninsured delinquent employer.** The Commissioner of Labor shall, on behalf of the "uninsured employer's fund," exhaust all remedies at law against the uninsured delinquent employer of the claimant to collect the amount of any award to the claimant paid by the fund.

**34:15-120.14. Inapplicability of L.1988, c. 25 on obligations of insurance carriers or self-insured employers.** Nothing in this act, P.L.1988, c. 25 (C.34:15-120.9 et seq.), shall affect the obligations of insurance carriers or self-insured employers imposed by any other section of the workers' compensation law, R.S. 34:15-1 et seq.

## Article 7B. SELF-INSURERS GUARANTY ASSOCIATION

**34:15-120.15. Definitions.** As used in this act:

“Association” means the New Jersey Self-Insurers Guaranty Association created in subsection a. of section 2 of this act.<sup>17</sup>

Board of directors” or “board” means the board of directors of the association established under section 3 of this act.<sup>18</sup>

“Commissioner” means the Commissioner of Insurance.

“Department” means the Department of Insurance.

“Fund” means the Insolvency Fund created pursuant to section 5 of this act.<sup>19</sup>

“Injured worker” or “employee” means an employee of an employer or a dependent of the employee to whom the employer is obligated to pay compensation pursuant to chapter 15 of Title 34 of the Revised Statutes.

“Insolvent member” means a member employer: (1)(a) which files for relief in bankruptcy under Title 11 of the United States Code, 11 U.S.C. § 101 et seq.; (b) against which involuntary bankruptcy proceedings are filed under that title; or (c) for which a receiver has been appointed by a court of competent jurisdiction; and (2) which is determined to be insolvent by the board as provided in its plan of operation, based upon the member employer’s ability to pay compensation pursuant to R.S. 34:15-77.

“Member employer” or “member” means a self-insurer which is a member of the association.

“Self-insurer” means an employer, other than a governmental entity, which self-insures for the purposes of workers’ compensation as permitted by R.S. 34:15-77.

**34:15-120.16. New Jersey self-insurers guaranty association;** membership required to act as a self-insurer; exceptions; voluntary withdrawal from association. a. There is created a nonprofit entity to be known as the “New Jersey Self- Insurers Guaranty Association.” All self-insurers shall be members of the association as a condition of their authority to self-insure in this State. The association shall perform its functions under a plan of operation as established and approved under section 6 of this act<sup>20</sup> and shall exercise its powers and duties through a board of directors as established under section 3 of this act.<sup>21</sup>

b. A member may voluntarily withdraw from the association when the member voluntarily terminates the self-insurance privilege and pays all assessments due to the date of that termination. However, the withdrawing member shall continue to be bound by the provisions of this act relating to the period of its membership and any claims charged pursuant thereto. A withdrawing member shall also be required to provide to the department upon withdrawal, and at 12-month intervals thereafter, satisfactory proof that it continues to meet the standards of R.S. 34:15-77 in relation to claims incurred while the withdrawing member exercised the privilege of self-insurance. Such reporting shall

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<sup>17</sup> N.J.S.A. 34:15-120.16

<sup>18</sup> N.J.S.A. 34:15-120.17.

<sup>19</sup> N.J.S.A. 34:15-120.19.

<sup>20</sup> N.J.S.A. 34:15-120.20.

<sup>21</sup> N.J.S.A. 34:15-120.17.

continue until the withdrawing member satisfies the department that there is no remaining value to claims incurred while the withdrawing member was self-insured. If during this reporting period the withdrawing member fails to meet the standards of R.S. 34:15-77, the withdrawing member shall thereupon, and at six-month intervals thereafter, provide to the department and the association the certified opinion of an independent actuary who is a member of the American Society of Actuaries of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred while it was a self-insurer, using a discount rate of four percent. With each such opinion, the withdrawing member shall deposit with the department security in an amount equal to the value certified by the actuary and of a type that is acceptable for the purposes of R.S. 34:15-77. The withdrawing member shall continue to provide such opinions and to provide such security until such time as the latest opinion shows no remaining value of claims. The association has a cause of action against a withdrawing member, and against any successor of a withdrawing member, who fails to timely provide the required opinion or who fails to maintain the required deposit with the department. The association shall be entitled to recover a judgment in the amount of the actuarial present value of the determined and estimated future compensation payments of the withdrawing member for claims incurred during the time that the withdrawing member exercised the privilege of self-insurance, together with reasonable attorney's fees. For purposes of this section, the "successor of a withdrawing member" means any person, business entity, or group of persons or business entities, which holds or acquires legal or beneficial title to the majority of the assets or the majority of the shares of the withdrawing member.

**34:15-120.17. Board of directors;** membership; qualifications; terms of office; vacancies; expenses. The board of directors of the association shall consist of five persons and shall be organized as established in the plan of operation. With respect to initial appointments, the commissioner shall, within 180 days of the effective date of this act, approve and appoint to the board persons who are employed or who have been employed by a self-insurer in this State required to become a member of the association pursuant to the provisions of section 2 of this act<sup>22</sup> and are, or were, as the case may be, responsible for the administration of workers' compensation for that self-insurer for at least five years and who are recommended by the self-insurers in this State required to become members of the association pursuant to the provisions of section 2 of this act. If the commissioner finds that any person so recommended does not have the necessary qualifications for service on the board and a majority of the board has been appointed, the commissioner shall request the directors thus far approved and appointed to recommend another person for appointment to the board. Each director shall serve for a four-year term and may be reappointed.

Appointments other than initial appointments shall be made by the commissioner upon recommendation of members of the association. Any vacancy on the board shall be filled for the remaining period of the term in the same manner as appointments other than initial appointments are made. Each director may be reimbursed from assets of the

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<sup>22</sup> N.J.S.A. 34:15-120.16.

association for expenses incurred in carrying out the duties of the board on behalf of the association.

**34:15-120.18. Association obligated for payment of compensation; powers.** a. Upon creation of the Insolvency Fund pursuant to the provisions of section 5 of this act,<sup>23</sup> the association is obligated for payment of compensation under chapter 15 of Title 34 of the Revised Statutes to insolvent members' employees resulting from: (1) incidents and injuries existing prior to the member becoming an insolvent member; and (2) incidents and injuries occurring after the member has become an insolvent member, if the employee makes timely claim for those payments according to procedures set forth by a court of competent jurisdiction over the delinquency or bankruptcy proceedings of the insolvent member. Such obligation includes only that amount due the injured worker or workers of the insolvent member under chapter 15 of Title 34 of the Revised Statutes. In no event is the association obligated to a claimant in an amount in excess of the obligation of the insolvent member. The association shall be deemed the insolvent member for purposes of chapter 15 of Title 34 of the Revised Statutes to the extent of its obligation on the covered claims and, to that extent, shall have all rights, duties and obligations of the insolvent member as if the member had not become insolvent. However, in no event shall the association be liable for any penalties or interest or for compensation payments which were due before the member became an insolvent member.

b. The association may:

- (1) Employ or retain those persons necessary to handle claims and perform other duties of the association.
- (2) Borrow funds necessary to effect the purposes of this act in accordance with the plan of operation.
- (3) Sue or be sued.
- (4) Negotiate and become a party to those contracts as are necessary to carry out the purposes of this act.
- (5) Purchase reinsurance as it determines necessary pursuant to the plan of operation.
- (6) Review all applicants for membership in the association. Prior to a final determination by the department as to whether or not to approve any applicant for membership in the association, the association may issue opinions to the department concerning any applicant, which opinions shall be considered by the department prior to any final determination.
- (7) Charge fees to any member of the association to cover the actual costs of examining the financial condition of that member.
- (8) Charge an applicant for membership in the association a fee sufficient to cover the actual costs of examining the financial condition of the applicant.

c. (1) To the extent necessary to secure funds for the payment of covered claims and also to pay the reasonable costs to administer them, the association shall levy assessments on its members. The assessment charged to each member shall be in the proportion that the member's compensation payments during the 12-month period ending on the June 30th immediately preceding the date of the assessment bear to the total

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<sup>23</sup> N.J.S.A. 34:15-120.19.

compensation payments made by all members during that period. The assessment levied against any member in any one year shall be in an amount not exceeding 1.5 percent of the total compensation paid by the member during the 12-month period ending on the June 30th immediately preceding the date of the assessment, except that the association shall increase the assessment to not more than two percent each year as needed to establish and sustain a prefunded reserve of \$1,000,000. Assessments shall be administered by the board of directors in the manner specified by the plan of operation. Each member so assessed shall have at least 30 days' written notice as to the date the assessment is due and payable. The association shall levy assessments against any newly admitted member of the association so that the basis of contribution of any newly admitted member is the same as previously admitted members, provision for which shall be contained in the plan of operation.

(2) If, in any one year, funds available from such assessments, together with funds previously raised, are not sufficient to make all the payments or reimbursements then owing, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as sufficient additional funds become available.

(3) No State funds of any kind shall be allocated or paid to the association or any of its accounts.

d. The association shall make every reasonable effort and undertake all appropriate actions to obtain from an insolvent member whatever funds are needed to pay compensation due to employees of the insolvent member.

**34:15-120.19. Insolvency fund.** Upon the adoption of a plan of operation or the adoption of rules by the commissioner pursuant to subsection a. of section 6 of this act,<sup>24</sup> there shall be created an Insolvency Fund to be managed by the association.

a. The Insolvency Fund is created for purposes of meeting the obligations of insolvent members incurred while members of the association and other insolvent self-insurers as provided in section 15 of this act<sup>25</sup> and after the exhaustion of any bond, as required under chapter 15 of Title 34 of the Revised Statutes. However, if the bond, surety, or reinsurance policy is payable to the association, the association shall commence to provide benefits out of the fund and be reimbursed from the bond, surety, or reinsurance policy. The method of operation of the fund shall be defined in the plan of operation pursuant to section 6 of this act.

b. The department shall have the authority to audit the financial soundness of the fund annually.

c. The commissioner may offer certain amendments to the plan of operation to the board of directors for purposes of assuring the ongoing financial soundness of the fund and its ability to meet the obligations of this act.

d. The department actuary may make recommendations to improve the orderly payment of claims.

**34:15-120.20. Plan of operation; failure to submit plan; purpose of plan.** a. (1) Within one year of the effective date of this act, the board of directors shall submit to the

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<sup>24</sup> N.J.S.A. § 34:15-120.20.

<sup>25</sup> N.J.S.A. § 34:15-120.29.

commissioner a proposed plan of operation for the fair, reasonable and equitable administration of the association and the fund. The plan of operation, and any amendments thereto, shall take effect upon approval in writing by the commissioner.

(2) If the board of directors fails to submit a plan within one year of the effective date of this act, or thereafter fails to submit any acceptable amendments to the plan, the commissioner shall promulgate the rules necessary to effectuate the provisions of this section. The rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the board of directors and approved by the commissioner.

b. The plan of operation shall establish the programs necessary to protect against the insolvency of a member of the association and shall provide that the members of the association shall be responsible for maintaining an adequate fund to meet the obligations of insolvent members and other insolvent self-insurers provided for under this act and the board of directors is authorized to contract and employ those persons with the necessary expertise to carry out these stated purposes.

c. All member employers shall comply with the plan of operation.

d. The plan of operation shall:

(1) Establish the procedures whereby all the powers and duties of the association under sections 4 and 15 of this act<sup>26</sup> will be performed.

(2) Establish procedures for handling assets of the association.

(3) Establish the amount and method of reimbursing members of the board of directors under section 3 of this act.<sup>27</sup>

(4) Establish procedures and standards for determining the insolvency of member employers pursuant to the provisions of this act.

(5) Establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims. Notice of claims to the receiver or liquidator of the insolvent member shall be deemed notice to the association or its agent, and a list of those claims shall be submitted periodically to the association or similar organization in another state by the receiver or liquidator.

(6) Establish regular places and times for meetings of the board of directors.

(7) Establish procedures for records to be kept of all financial transactions of the association and its agents and the board of directors.

(8) Provide that any member employer aggrieved by any final action or decision of the association may appeal to the department within 30 days after the action or decision.

(9) Establish the procedures whereby recommendations of candidates for the board of directors shall be submitted to the commissioner.

(10) Contain additional provisions necessary or proper for the execution of the powers and duties of the association.

e. The plan of operation may provide that any or all of the powers and duties of the association, except those specified under paragraphs (1), (2) and (4) of subsection d. of this section, be delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association or its equivalent in two or more states. Such a corporation, association, or organization shall be reimbursed

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<sup>26</sup> N.J.S.A. §§ 34:15-120.18 and 34:15-120.29.

<sup>27</sup> N.J.S.A. § 34:15-120.17.

as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation of powers or duties under this subsection shall take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization which extends protection which is not substantially less favorable and effective than the protection provided by this act.

**34:15-120.21. Written notice of bankruptcy proceedings;** determination of insolvency.

a. A member employer which files for relief in bankruptcy under Title 11 of the United States Code, 11 U.S.C. § 101 et seq.; or against which involuntary bankruptcy proceedings are filed under that title; or for which a receiver is appointed by a court of competent jurisdiction, shall file written notice of that fact with the commissioner and the board of directors of the association within 30 days of the occurrence of such an event.

b. Upon receipt of the notice required by subsection a. of this section, the board shall review the member employer's ability to pay compensation pursuant to R.S. 34:15-77 and make a determination as to insolvency. If the board determines at any time that the member employer is insolvent, it shall notify the commissioner and the members of the association not later than three business days after the determination of insolvency.

**34:15-120.22. Powers of department.** The department may:

a. Require that the association notify other interested parties of the determination of insolvency and of their rights under this act. Notification shall be by mail at the last known address thereof when available; but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient.

b. Suspend or revoke the authority of any member employer failing to pay an assessment when due or failing to comply with the plan of operation to self-insure in this State. As an alternative, the department may levy a fine on any member employer failing to pay an assessment when due. Such fine shall not exceed five percent of the unpaid assessment per month, except that no fine shall be less than \$100 per month.

**34:15-120.23. Assignment of rights against insolvent member to association.** a. Any person who recovers from the association under this act shall be deemed to have assigned his rights to the association to the extent of that recovery. Every claimant seeking the protection of this act shall cooperate with the association to the same extent as that person would have been required to cooperate with the insolvent member. The association shall have no cause of action against the employee of the insolvent member for any sums the association has paid out, except those causes of action which the insolvent member would have had if the sums had been paid by the insolvent member. In the case of an insolvent member operating with assessment liability, payments of claims by the association shall not operate to reduce the liability of the insolvent member to the receiver, liquidator, or statutory successor for unpaid assessments.

b. The receiver, liquidator, or statutory successor of an insolvent member shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant those claims priority against the

rev. date January 17, 2010

assets of the insolvent member equal to that to which the claimant would have been entitled in the absence of this act. The expense of the association or similar organization in handling claims shall be accorded the same priority as the expenses of the liquidator.

c. The association shall file periodically with the receiver or liquidator of the insolvent member statements of the covered claims paid by the association and estimates of anticipated claims on the association, which shall preserve the rights of the association against the assets of the insolvent member.

**34:15-120.24. Detection and prevention of employer insolvencies.** To aid in the detection and prevention of employer insolvencies:

a. Upon determination by majority vote of the membership of the board that any member employer may be insolvent or in a financial condition hazardous to the employees thereof or to the public, it shall be the duty of the board of directors to notify the department of any information indicating that condition.

b. The board of directors may, upon majority vote of the membership of the board, request that the department determine the condition of any member employer which the board in good faith believes may no longer be qualified to be a member of the association. Within 30 days of the receipt of that request or, for good cause shown, within a reasonable time thereafter, the department shall make such determination and shall forthwith advise the board of its findings. Each request for a determination shall be kept on file by the department, but the request shall not be open to public inspection prior to the release of the determination to the public.

c. It shall also be the duty of the department to report to the board of directors when it has reasonable cause to believe that a member employer may be in such a financial condition as to be no longer qualified to be a member of the association.

d. The board of directors may, upon majority vote of the membership of the board, make reports and recommendations to the department upon any matter which is germane to the solvency, liquidation, rehabilitation, or conservation of any member employer. Such reports and recommendations shall not be considered public documents.

e. The board of directors may, upon majority vote of the membership of the board, make recommendations to the department for the detection and prevention of employer insolvencies.

f. The board of directors shall, at the conclusion of any member's insolvency in which the association was obligated to pay covered claims, prepare a report on the history and cause of that insolvency, based on the information available to the association, and shall submit that report to the department.

**34:15-120.25. Examination and regulation of association by department;** annual financial report. The association shall be subject to examination and regulation by the department. No later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the department.

**34:15-120.26. Immunity from liability.** There shall be no liability on the part of, and no cause of action of any nature shall arise against, any member employer, the association or its agents or employees, the board of directors, or the department or its

representatives for any action or omission by them in the performance of their powers and duties under this act.

**34:15-120.27. Stay of proceedings upon insolvency of member.** a. All proceedings in which an insolvent member is a party, or is obligated to defend a party, in any court or before any quasi-judicial body or administrative board in this State shall be stayed for up to six months, or for such additional period from the date the member becomes insolvent, as is deemed necessary by a court of competent jurisdiction to permit proper defense by the association of all pending causes of action as to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the insolvent member.

The association, either on its own behalf or on behalf of the insolvent member, may apply to have that judgment, order, decision, verdict or finding set aside by the same court or administrator that made that judgment, order, decision, verdict or finding and shall be permitted to defend against that claim on the merits. If requested by the association, the stay of proceedings may be shortened or waived.

b. In any proceeding in bankruptcy in which the payment of benefits has been stayed, the association shall appear and move to lift the stay so that the orderly administration of claims can proceed.

**34:15-120.28. Period of limitations for filing claims.** Notwithstanding any other provision of chapter 15 of Title 34 of the Revised Statutes, a covered claim, as defined therein, with respect to which settlement is not effected and pursuant to which suit is not instituted against the insured of an insolvent member or the association within one year after the deadline for filing claims with the receiver of the insolvent member, or any extension of the deadline, shall thenceforth be barred as a claim against the association.

**34:15-120.29. Additional obligations of association.** In addition to its obligation to pay compensation to the employees of insolvent members pursuant to section 4 of this act,<sup>28</sup> the association shall be obligated for payment of compensation under chapter 15 of Title 34 of the Revised Statutes to the employees of any self-insurer declared to be insolvent by a court of competent jurisdiction on or after October 1, 1990, but prior to the effective date of this act, as if that self-insurer were an insolvent member subject to the provisions of this act.

**34:15-120.30. Construction of act.** This act shall not be construed as reducing, to any degree or in any way, the responsibility of the commissioner to exercise caution in authorizing any employer to become a self-insured employer, or the commissioner's responsibility to require guarantees, reserve funds, surety bonds or partial insurance as needed to provide adequate assurance of the employer's ability to pay compensation pursuant to R.S.34:15-77. The purpose of the association is to provide an assurance of the payment of workers' compensation to the employees of insolvent members, not to exempt any employer, even an insolvent employer, from the responsibility to provide

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<sup>28</sup> N.J.S.A. § 34:15-120.18.

workers' compensation to victims of workplace injury or illness, or to reduce, to any degree or in any way, the responsibility of a self-insured employer to provide appropriate guarantees, funds, bonds or other assurances that compensation will be available pursuant to R.S.34:15-77.

## Article 8. DESTRUCTION OF RECORDS

**34:15-121. Records of worker's compensation formal cases.** Any records of, or pertaining to, workers' compensation formal cases, wherein original claim petitions have been on file for 45 or more years, may be destroyed by the Division of Workers' Compensation in the State Department of Labor; provided, the Commissioner of Labor shall approve such destruction.

**34:15-122. Records of worker's compensation of kind specified in article six.** Any records of, or pertaining to, worker's compensation of the kind and character specified in article six of chapter fifteen of Title 34 of the Revised Statutes,<sup>29</sup> which have been or shall have been on file for eight or more years, may be destroyed by the Division of Workmen's Compensation; provided, the Commissioner of Labor and Industry shall approve such destruction.

**34:15-123. Agreements for payment of worker's compensation.** Agreements for the payment of worker's compensation, which have been or shall have been on file for eight or more years, may be destroyed by the Division of Worker's Compensation; provided, the Commissioner of Labor and Industry shall approve such destruction. Any agreement, however, covering a period greater than eight years shall be kept on file for the full term of the agreement.

**34:15-124. Records and papers not part of record of worker's compensation formal cases.** Records and papers of, or pertaining to, worker's compensation cases, on file in the Division of Worker's Compensation and its predecessor, Worker's Compensation Bureau, which do not constitute a part of the record of any worker's compensation formal case, may be destroyed by the Division of Worker's Compensation; provided, the Commissioner of Labor and Industry and the Bureau of Archives and History in the State Department of Education shall approve such destruction.

**34:15-125. Microfilmed records.** Any records of, or pertaining to, workers' compensation formal cases, which have not been on file for 45 or more years but which have been microfilmed or retained in full in other media, provided such microfilms or information retained in other media shall be preserved in full and arranged for convenient examination, may be destroyed by the Division of Workers' Compensation; provided, the Commissioner of Labor shall approve such destruction.

**34:15-126. Microfilm, force and effect of.** Any microfilm made or information retained in other media by the Division of Workers' Compensation pursuant to law, or a certified copy of such microfilm or information retained in other media, shall have the same force and effect as the original in any court or public proceeding and shall be evidential in like manner and to the same effect as though the original record had been there produced and proved.

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<sup>29</sup> N.J.S.A. § § 34:15-96 to 34:15-102.

**34:15-127. Liability for destruction of records.** No official, or member of the Department of Labor and Industry, shall be held liable on his bond, or in the way of damages, for loss, or in any other manner, because of the destruction of any records or papers pursuant to this act.

## Article 9. INSPECTION OF RECORDS

### **34:15-128. Limited right to inspect or copy records.**

a. Notwithstanding any other provision of the chapter to which this act is a supplement [34:15-1 et seq.] or of any other law, no records maintained by the Division of Workers' Compensation or the Compensation Rating and Inspection Bureau shall be disclosed to any person who seeks disclosure of the records for the purpose of selling or furnishing for a consideration to others information from those records or reports or abstracts of workers' compensation records or work-injury records pertaining to any claimant. No information shall be disclosed from those records to any person not in the division, unless:

(1) The information is provided in a manner which makes it impossible to identify any claimant;

(2) The records are opened for the exclusive purpose of permitting a claimant, employer, insurance carrier or authorized agent of the claimant, employer or insurance carrier to conduct an investigation by or on behalf of the claimant, employer or insurance carrier in connection with any pending workers' compensation case to which the claimant, employer or insurance carrier is a party, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(3) The records are opened for the exclusive purpose of permitting a third party directly involved in a workers' compensation case, including any workers' compensation lienholders, or an authorized agent of the third party, to conduct an investigation by or on behalf of the third party in connection with the case, and the party seeking access to the records certifies to the division that the information from the records will be used only for purposes directly related to the case;

(4) The records are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L. 1983, c. 320 (C. 17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding;

(5) The division provides the information to another governmental agency pursuant to law, for a duly recognized purpose of that agency, which agency shall not subsequently disclose any of the information to any person, organization, entity or governmental agency not entitled to receive the information from the Compensation Rating and Inspection Bureau or the Division of Workers' Compensation pursuant to the workers' compensation law, *R.S. 34:15-1 et seq.*; or

(6) The information is information about the claimant requested by the claimant, in which case the division shall disclose the information and the claimant shall not be charged fees in excess of the cost of providing copies of the information.

b. Notwithstanding any other provision of law, no information from records maintained by the Compensation Rating and Inspection Bureau pertaining to any work injury or illness or workers' compensation claim shall be disclosed to any business or other member of the public unless the bureau discloses the information in a manner which makes it impossible to identify the claimant.

c. Notwithstanding any other provision of law, no information provided by the division to any other governmental agency pursuant to subsection a. of this section shall be disclosed by the agency to any business or other member of the public unless the information is disclosed to the business or other member of the public in a manner which makes it impossible to identify the claimant.

d. Notwithstanding the restrictions on disclosure set forth under subsections a. through c. of this section, a claimant may authorize the release of records of the claimant to a specific person not otherwise authorized to receive the records, by submitting written authorization for the release to the division specifically directing the division to release workers' compensation records to that person. However, no such authorization directing disclosure of records to a prospective employer shall be valid, nor shall an authorization permitting disclosure of records in connection with assessing fitness or capability for employment be valid, and no disclosure of records shall be made with respect thereto, unless requested pursuant to and consistent with the federal "Americans with Disabilities Act of 1990," 42 U.S.C. § 12101 et seq. and the "Law Against Discrimination," P.L. 1945, c. 169 (C. 10:5-1 et seq.). It shall be unlawful for any person to consider for the purpose of assessing eligibility for a benefit, or as the basis for an employment-related action, an individual's failure to provide authorization under this subsection.

#### **34:15-128.1. Short title**

Sections 6 through 9 of this act [34:15-128.2 -- 34:15-128.5] shall be known and may be cited as the "Workers' Compensation Medical Information Confidentiality Act."

HISTORY: L. 2001, c. 362, § 5.

#### **34:15-128.2. Definitions relating to "Workers' Compensation Medical Information Confidentiality Act."**

For the purposes of section 1 of P.L. 1966, c. 164 (C. 34:15-128) and sections 6 through 9 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5]:

"Disclose" means to release, transfer, open for inspection, make available for copying or otherwise divulge information to any person other than the individual who is the subject of the information.

"Division" means the Division of Workers' Compensation.

"Medical information" means information, whether oral or recorded in any form or medium, that is created or received by a health care provider regarding an individual which is or may be used in connection with a workers' compensation case, or that is provided to the employer or its workers' compensation insurer or their agents in connection with the case, and relates to an individual's past, present or future physical or mental health or condition, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual.

"Workers' compensation case" or "case" means any case in which an individual seeks workers' compensation benefits, whether or not the individual files a formal claim with the division.

HISTORY: L. 2001, c. 362, § 6.

### **34:15-128.3. Disclosure of medical information**

a. In any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to disclose any medical information regarding the individual to any person other than a participant in that workers' compensation case, a reinsurer, the health care provider, medical and non-medical experts retained in connection with the case, the division, or the Compensation Rating and Inspection Bureau, except under the following circumstances:

(1) The information is disclosed in a manner that makes it impossible to ascertain the identity of the individual;

(2) The information is collected, used or disclosed to or from an insurance support organization, provided that the information is used only to perform the insurance functions of claims settlement, detection and prevention of fraud, or detection and prevention of a misrepresentation or nondisclosure which is material to an insurance claim;

(3) Records containing the information are subpoenaed by the Commissioner of Banking and Insurance pursuant to section 10 of P.L. 1983, c. 320 (C. 17:33A-10) or by a court of competent jurisdiction in a civil or criminal proceeding; or

(4) The information is disclosed to another employer or insurance carrier of that employer for the sole purpose of determining the credit to be given to the other employer or carrier pursuant to subsection d. of *R.S. 34:15-12* if the individual seeks compensation from the other employer or insurance carrier.

b. The Commissioner of Banking and Insurance shall have the power to examine and investigate the affairs of every insurance support organization that receives information pursuant to this section in order to determine whether the insurance support organization has been or is engaged in any conduct in violation of sections 6 through 9 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5].

HISTORY: L. 2001, c. 362, § 7.

### **34:15-128.4. Withholding information unlawful in certain circumstances**

Except for medical or non-medical evaluations performed for the purposes of evaluating the permanency of an employee's disability requested by the employer or its

rev. date January 17, 2010

insurance carrier, in any case of an individual seeking workers' compensation from an employer, it shall be unlawful for the employer, the workers' compensation insurance carrier of the employer, a health care provider treating or evaluating the individual in connection with the case, or a third party in the case, or their agents, to withhold from the individual any medical information they have regarding that individual which is requested by the individual, and if an individual requests the medical information, the individual shall not be charged fees in excess of the cost of providing copies of the information.

HISTORY: L. 2001, c. 362, § 8.

**34:15-128.5. Violations; fine and penalty**

Any person who violates any provision of section 7 or 8 of this amendatory and supplementary act [34:15-128.2 -- 34:15-128.5] shall be subject to a fine of not less than \$ 100 nor more than \$ 1,000 or imprisonment for not more than 60 days or both.

HISTORY: L. 2001, c. 362, § 9.

## **Article 10. HORSE RACING COMPENSATION BOARD**

**34:15-129. Short title;** New Jersey Horse Racing Injury Compensation Board Act. This act shall be known and may be cited as the “New Jersey Horse Racing Injury Compensation Board Act.”

**34:15-130. Legislative findings and declaration.**

2. The Legislature finds and declares that, whereas current law already requires virtually all employers to provide for the payment of workers' compensation benefits to injured employees, because of the unique nature of the horse racing industry, difficulties have arisen in ensuring that coverage is provided to employees. For example, out-of-State horse owners are sometimes unaware of their obligation to provide such coverage, or because a jockey may ride the horses of more than one owner, there may be confusion as to who the responsible employer is. As a result, serious injuries have been sustained for which there is no coverage.

It is, therefore, in the public interest to ensure that workers' compensation coverage is available to persons employed in the thoroughbred and standardbred horse racing industries in New Jersey by collectively securing workers' compensation insurance coverage for certain designated horse racing industry employees who are eligible to receive that coverage pursuant to the provisions of this act, the costs of which shall be funded by the horse racing industry, and the assessments for funding that coverage shall be calculated separately for the thoroughbred and standardbred industries, based on their respective experience.

It is also in the public interest for the Legislature to provide, through this act, sufficient guidance and clarity regarding which horse racing industry employees are eligible for coverage secured by the New Jersey Horse Racing Injury Compensation Board pursuant to this act, and the circumstances that must exist for that coverage to be applicable.

**34:15-131. Definitions relative to the New Jersey Horse Racing Injury Compensation Board.**

3. As used in this act:

“Board” means the New Jersey Horse Racing Injury Compensation Board established by section 4 of P.L.1995, c.329 (C.34:15-132).

"Commission" means the New Jersey Racing Commission established pursuant to section 1 of P.L.1940, c.17 (C.5:5-22).

"Horse racing industry employee" means:

a. the driver of a standardbred horse, who is licensed or is required to be licensed by the commission, while that driver is engaged in performing those services for which that driver is or is required to be licensed at a permitted New Jersey racetrack in connection with the racing of a horse. That standardbred driver shall be considered to be the horse racing industry employee of a standardbred owner for the purposes of calculating, allocating and assessing the cost of workers' compensation insurance coverage;

b. the jockey, jockey apprentice or exercise rider of a thoroughbred horse, who is licensed or is required to be licensed by the commission, while engaged in performing those services for which that jockey, jockey apprentice or exercise rider is or is required to be licensed at a permitted New Jersey racetrack in connection with the racing or exercising of a horse. That jockey, jockey apprentice or exercise rider shall be considered to be the horse racing industry employee of a thoroughbred owner for the purposes of calculating, allocating and assessing the cost of workers' compensation insurance coverage; and

c. the stable employees of a thoroughbred trainer, who are licensed or are required to be licensed by the commission, while those stable employees are engaged in performing those services for which those stable employees are licensed or are required to be licensed at a permitted New Jersey racetrack, during the period of time the trainer's horses are stabled at the permitted New Jersey racetrack. Stable employees as defined herein shall include assistant trainers, grooms, and hot walkers.

A "horse racing industry employee" shall not mean a standardbred owner, standardbred trainer, thoroughbred owner, or thoroughbred trainer.

"Permitted New Jersey racetrack" means a New Jersey racetrack that has been approved by the commission to hold a horse race meeting as evidenced by a valid permit issued pursuant to section 18 of P.L.1940, c.17 (C.5:5-38) for the year in which the race meeting is held.

"Stabled" means the long-term placement of horses in assigned stalls in barns located on the grounds of a permitted New Jersey racetrack, in which stalls the horses reside continuously for the purpose of racing at any permitted racetrack in New Jersey, or the short-term placement of those horses in stalls located on the grounds of an out-of-State racetrack in connection with the pre-race detention requirements of that out-of-State racetrack, provided the horses are returned to their permanent stabled location at the permitted New Jersey racetrack within a maximum of 48 hours after that out-of-State race.

**34:15-132. New Jersey horse racing injury compensation board established.** There is hereby established the "New Jersey Horse Racing Injury Compensation Board," which shall be in, but not of, the Department of Law and Public Safety.

a. The board shall consist of seven members as follows: the Commissioner of Banking and Insurance, or his designee; the Attorney General, or his designee; one member of the New Jersey Racing Commission elected by the members of the commission, or his designee; and four members of the horse racing industry appointed by the Governor, one of whom shall represent the thoroughbred industry, one of whom shall represent the standardbred industry, one of whom shall represent the racetrack owners and one of whom shall represent jockeys regularly riding at New Jersey racetracks. In making these appointments, the Governor shall take into consideration the recommendations of the thoroughbred and standardbred industries, the racetrack owners and the organization which represents the largest number of jockeys regularly riding at New Jersey racetracks, respectively.

b. Members of the board shall serve without compensation but may be reimbursed for their expenses out of the administrative funds of the board.

c. The affirmative vote of at least four members shall constitute a majority for the transaction of any business and a quorum shall consist of a simple majority.

**34:15-133. Powers of board.** The board shall have the power to:

a. purchase and serve as the master policyholder for any insurance, or self-insure pursuant to R.S. 34:15-77, for the purposes of this act;

b. enter into contracts with other persons, entities or public bodies for any professional, administrative or other services, including legal counsel if approved by the Attorney General, as may be necessary to carry out the duties of the board and the purposes of this act;

c. assess, collect and disburse all money due or payable to or by the board, or authorize such collection and disbursement;

d. invest moneys held in trust under any fund in investments which are approved by the State Investment Council for the investment of surplus moneys of the State;

e. approve assessments, surplus, limits of coverage, limits of excess or reinsurance, coverage documents and other financial and operating policies of the board;

f. promulgate rules and regulations, pursuant to the "Administrative Procedure Act," P.L.1968, c. 410 (C. 52:14B-1 et seq.), necessary to effectuate the purposes of this act; and

g. take all actions necessary to carry out the provisions of this act.

**34:15-134. Insurance coverage; assessments.**

6 a. The board shall secure workers' compensation insurance coverage for horse racing industry employees.

b. The board shall assess and collect sufficient funds to pay the costs of the insurance or self insurance coverage required by this act and by the workers' compensation laws of this State and to pay any additional costs necessary to carry out its other duties. The board shall ascertain the total funding necessary, establish the sums that are to be paid and establish by regulation the method of assessing and collecting these moneys. Assessments shall include, but shall not be limited to, deductions from gross overnight purses paid to owners, so long as such deductions do not exceed 3% of standardbred purses or 4% of thoroughbred purses, as applicable, and additional assessments may be collected as needed from standardbred owners, thoroughbred owners and thoroughbred trainers who are licensed or are required to be licensed by the commission. Track owners shall not be assessed for such costs.

c. Assessments for workers' compensation insurance coverage pursuant to this act shall be calculated and allocated separately for the thoroughbred and standardbred industries, based on their respective loss experience, and any assessments pursuant to subsection b. of this section shall be allocated accordingly. No public funds, other than the moneys collected pursuant to subsection b. of this section, shall be used for the purpose of self insurance or for paying the costs of workers' compensation insurance or workers' compensation benefits pursuant to this act.

**34:15-134.1. Trainer to carry compensation insurance for employees, eligibility for coverage.**

2. Notwithstanding any provision of P.L.1995, c.329 (C.34:15-129 et seq.), as amended:

a. A standardbred trainer who is licensed or is required to be licensed by the commission shall carry compensation insurance covering the standardbred trainer's employees as required by R.S.34:15-1 et seq., regardless of where the standardbred trainer's horses are stabled;

b. With respect to the stable employees of a thoroughbred trainer, the workers' compensation policy secured by the board shall cover only those stable employees who are licensed or are required to be licensed by the commission when they are employed to work at a permitted New Jersey racetrack to care for the horses located there. To be eligible for coverage and benefits under the workers' compensation policy secured by the board, those stable employees shall be injured at a permitted New Jersey racetrack while they are engaged in performing services for which they are licensed or are required to be licensed. Those thoroughbred trainer's stable employees shall remain eligible for coverage under the workers' compensation policy secured by the board, if the trainer requires them to accompany a horse that is transported from the permitted New Jersey racetrack where it is stabled to compete in a race at an out-of-State racetrack. Those stable employees shall remain eligible for coverage under the board's policy for that period of time in which the out-of-State racetrack requires the horse to be present prior to the race, provided that the horse is returned to stabling at a permitted New Jersey racetrack within a maximum of 48 hours after the race. The workers' compensation policy of the board shall not cover those stable employees who are licensed or are required to be licensed by the commission who work with horses that the trainer has stabled at a location other than a permitted New Jersey racetrack;

c. A thoroughbred trainer who is licensed or is required to be licensed by the commission shall carry compensation insurance covering the thoroughbred trainer's employees as required by R.S.34:15-1 et seq. when the trainer's horses are not stabled at a permitted New Jersey racetrack. A thoroughbred trainer whose horses are stabled at a permitted New Jersey racetrack and whose stable employees receive workers' compensation coverage through the policy secured by the board shall immediately

rev. date January 17, 2010

obtain compensation insurance covering these stable employees as required by R.S.34:15-1 et seq. if and when that trainer's horses are no longer stabled at a permitted New Jersey racetrack; and

d. A thoroughbred trainer whose stable employees receive workers' compensation coverage through the policy secured by the board shall ascertain and comply with the workers' compensation requirements of any other state to which that thoroughbred trainer is subject to jurisdiction. In such cases when a state other than New Jersey requires a thoroughbred trainer to obtain workers' compensation insurance coverage pursuant to the terms and conditions of its laws, any workers' compensation coverage provided through the policy secured by the board shall be secondary to the coverage required by the other state.

**34:15-135. Employee, employer relationship under the act.**

7 a. For the purposes of this act and R.S.34:15-36, a horse racing industry employee shall be deemed to be in the employment of the New Jersey Horse Racing Injury Compensation Board and in the employment of all standardbred owners, thoroughbred owners, or thoroughbred trainers, as the case may be, who are licensed or are required to be licensed by the commission and whose horses are stabled at a permitted New Jersey racetrack at the time of any occurrence for which workers' compensation benefits are payable pursuant to R.S.34:15-1 et seq. as supplemented by this act, and not solely in the employment of a particular owner or trainer. A horse racing industry employee shall not be deemed to be in the employment of the New Jersey Horse Racing Injury Compensation Board for any other purpose.

b. For the purposes of this act and R.S.34:15-36, the New Jersey Horse Racing Injury Compensation Board and all standardbred owners, thoroughbred owners, or thoroughbred trainers who are licensed or are required to be licensed by the commission and whose horses are stabled at a permitted New Jersey racetrack shall be deemed the employer of a horse racing industry employee at the time of any event for which workers' compensation benefits are payable pursuant to R.S.34:15-1 et seq., as supplemented by this act. The New Jersey Racing Injury Compensation Board shall not be deemed the employer of a horse racing industry employee for any other purpose.

c. With respect to horse racing industry employees, the requirements of R.S.34:15-1 et seq. regarding the provision of workers' compensation insurance by employers are satisfied in full by compliance with the requirements imposed upon standardbred owners, thoroughbred owners, and thoroughbred trainers by this act and any rules or regulations promulgated hereunder. If the responsible owner or trainer fails to comply with the requirements of this act or any rules or regulations promulgated hereunder and if the board is still required to pay the award on behalf of that owner or trainer who has been found to have violated this act or any rule or regulation promulgated hereunder, then the board is hereby authorized to impose a penalty on that owner or trainer in an amount not to exceed \$10,000 per violation.

rev. date January 17, 2010

d. The provisions of this act shall not apply to employees of an owner or trainer who are not horse racing industry employees.

**34:15-136. Employee wages to be computed under § 34:15-37 for purposes of determining benefits.** Notwithstanding the provision of any other law, in determining workers' compensation benefits pursuant to R.S. 34:15-1 et seq., the wages of a horse racing industry employee shall be computed in the manner provided under R.S. 34:15-37.

**34:15-136.1. Documentation, maintenance of complete and accurate records of wages paid.**

6 a. A thoroughbred trainer shall document and maintain complete and accurate records of all wages paid, whether by check or in cash, to stable employees and, notwithstanding the provisions of subsection b. of the definition of "Horse racing industry employee" in section 3 of P.L.1995, c.329 (C.34:15-131), to exercise riders who are hired in connection with the exercising or racing of a horse the trainer trains, who receive workers' compensation coverage through the policy secured by the board. A thoroughbred trainer shall produce these records within five days when directed to do so by the board or a designated agent of the board. The board is hereby authorized to impose a penalty in an amount not to exceed \$1,000 per violation on any trainer who fails to produce complete and accurate records within the time period allotted by this subsection.

b. The appropriate horseman's bookkeeper, consistent with regulations promulgated by the New Jersey Racing Commission, shall document and maintain complete and accurate records of all wages paid, whether by check or in cash, to a jockey or jockey apprentice or driver who receives workers' compensation coverage through the policy secured by the board.

**34:15-137. Existing insurance contracts or policies not affected.** Nothing in this act shall affect any existing contract or policy of employers' liability insurance or the liability of any insurance company or provider, or any arrangement now existing between employers and employees, providing for the payment to such employees, their families, dependents or representatives of sick, accident or death benefits in addition to the workers' compensation coverage provided pursuant to this act; but the liability for such compensation shall not be reduced or affected by any insurance, contribution or other benefit whatsoever, due to or received by the person entitled to such compensation, and the person so entitled shall, irrespective of any such insurance or other contract, have the right to recover the compensation directly from the employer under an existing contract or policy of employers' liability insurance. The board shall have the same rights provided other employers under R.S. 34:15-40.

**34:15-138. Plan of operation; required contents.** a. The board shall create a plan of operation to ensure fair, reasonable, and equitable administration. The plan of operation and any amendments thereto shall become effective upon approval in writing by the board.

b. The plan of operation shall constitute the by-laws of the board and shall in addition to the requirements enumerated elsewhere in this act:

- (1) establish procedures for handling the assets of the board;
- (2) establish regular places and times for meetings of the board;
- (3) establish procedures for records to be kept of all financial transactions of the board and its agents;
- (4) contain such additional provisions as the board may designate necessary or proper for the execution of the powers and duties of the board.

**34:15-139. Annual financial report.** The board shall be subject to examination by the commission. The board shall submit to the commission no later than March 31 of each year, a financial report for the preceding calendar year in a form approved by the commission, and a report of its activities during the preceding calendar

**34:15-140. Board exempt from all fees and state taxes.** The board shall be exempt from payment of all fees and all taxes levied by this State or any of its subdivisions.

**34:15-141. Liability of board and State.** a. The liability of the board and the State with respect to payment of any compensation, benefits, expenses, fees or disbursements properly chargeable against the board shall be limited to the assets held by the board and the board and the State shall not otherwise in any way or manner be liable for the making of any such payment.

b. The liability of the board under this act is limited to the provision of workers' compensation insurance coverage and any sanctions resulting from the failure to so provide. The board may purchase such insurance as necessary to protect any director, officer, agent or other representative from liability.

rev. date January 17, 2010

**34:15-142. Applicability of § 34:15-1 et seq.** The provisions of R.S. 34:15-1 et seq. shall apply to the provision of workers' compensation insurance under this act in all respects, except as otherwise specifically provided herein.

**STATUTE INDEX**

**A**

*Section 34:15-*

Absent witness, deposition .....65

Acceptance of article 2 (elective compensation), effect .....7, 8

Accident -

- hospital record open to inspection .....15
- knowledge of, employer.....17, 85
- insurance carrier.....85
- notice of .....17, 85
- reports by employer .....96, 97
- reports by insurance carrier.....98

Act -

- constitutionality and construction, articles 1, 2 .....42
- those excluded from.....36, 43, 43, 1
- those subject to.....7, 7.1, 8, 9, 36, 43, 75, 76

Actions at law

- article 1..... 1 et. seq.
- minors .....10
- third party cases .....40

Actuary assistants ..... 91

Adjournment-

- discretionary.....53
- failure of, effect.....54

Administration of trust, expenses .....24

Administrator, payments to.....21

Adopted children, dependents..... 13f

Affidavits, ex parte.....56

Age limit –

- dependent ..... 13f, 13i, 13j
- minor employment .....10

Agreement – (See also Determination and Rule for Judgment)

- approval and filing of .....50
- filed, period.....102
- for compensation.....50
- for compensation, effect.....51
- invalid, when .....39
- modification of.....27
- no bar .....22

Allegations, petition.....51

Ambulance, municipally operated; compensation of drivers ..... 75

Amputation .....12c21

Answer, time for filing, contents ..... 52

Appeal –

attorney's fees .....	64
procedure .....	66
Appliances –	
artificial .....	15
damage to .....	12, 7
orthopedic .....	16
prosthetic .....	16
Applicability of 34:15-1 et seq. ....	142
Application, review of award.....	27
Application for benefits, second injury fund .....	95, 1
Appointment of trustee .....	24
Approval of –	
compromise, minors.....	45
classification of risks, rates, schedules and	
rules, by insurance commissioner .....	88
Arm .....	12c9, 12c20, 12c21, 12c22, 12d
Assessments –	
enforcing provisions, compulsory insurance law, expense of .....	93
second injury fund .....	94
compensation security fund .....	107, 114
Assignment of claims or payments prohibited .....	29
Assumption of risk, article 1 .....	2
Attachment, payments exempt from .....	29
Attorneys' fees –	
allowance .....	64
approval of .....	26, 64
article 1.....	6
certiorari (Repealed) .....	67
defined, thirty party cases .....	40e
effect of offer on .....	64
third party cases .....	40
Award –	
Commutation.....	25, 57
modification of.....	57
payment in trust.....	24
reopening.....	27
review of, time limit .....	27
satisfaction of .....	24

## B

Bankruptcy or insolvency –	
of employer .....	82, 86
of mutual carrier .....	112, 117
of stock carrier .....	105, 117
Benefits, other, not bar to compensation .....	39, 40, 43
Birth certificate, minor employment .....	10

Board –	
of children’s guardians as representative of child beneficiary .....	48
of education employees, subject to act .....	43, 48
of education members .....	74.2
of governing body employees, subject to act .....	43
Board and lodging .....	37
Bond, administrator, etc. ....	21
Brothers, dependent .....	13f
Burden of proof –	
article 1 .....	5
article 2 .....	7
Bureau* -	
compensation rating and inspection, created .....	89
dispute, submission to .....	20
petition filed by .....	50
rules and regulations .....	102
Burial expenses allowance.....	12e, 13h
Business, discontinuance or sale of .....	69.1

## C

Camps, summer, employment of minors .....	10
Cancellation, insurance policy .....	81
Cardiovascular Claims .....	7.2
Casual employment -	
defined .....	36
relief work.....	43.1
Certificate, minor -	
employment.....	10
evidence of age .....	10
Certification of transcript.....	66
Certiorari –	
appeal, substitute for .....	66
fees (Repealer) .....	67
Character of work, as determining wage .....	37
Children – (See also Minors)	
adopted .....	13f
dependent .....	13f
employment of .....	10
illegitimate .....	13f
in esse .....	13f
posthumous .....	13f
Claimant’s petition.....	51
Claims –	
abandonment of.....	54
barred, when .....	34, 41

compromise of .....	45
jurisdiction .....	49
not assignable.....	29
Classification	
rates .....	88
risks .....	88
Commission of governing body, employees of,	
subject to act .....	43
Commissioner of insurance.....	70 et seq., 118
Commutation –	
award.....	25, 27
bond .....	21
on failure to pay .....	66.1
prohibited .....	25
Compensation –	
agreement, effect .....	34, 50, 51
dependents, rate.....	13f, 13j
distribution .....	13g
double, minor .....	10
elective .....	7 et seq.
failure to pay, penalty .....	66.1
insurance carrier directly liable, when .....	86
maximum .....	12a, 12b, 13j
method of calculating, for temporary disability .....	38
minimum.....	12a, 12b, 13j
not assignable .....	29
occupational disease .....	30, 32
order of payments .....	16
petition for .....	34, 50, 51
preferential liens .....	29
rate, determined .....	12a, 12b
remarriage of widow .....	13f
schedule .....	12
suspension of .....	19
temporary disability, calculated .....	38
waiting period .....	14
Compromise of minor’s claim .....	45
Compulsory insurance .....	70 et seq.
Computation, wages .....	37
Conclusive –	
presumption, dependency wife and children .....	13f
Constitutionality of act & Construction of act .....	42
Contempt, penalty .....	60
Contract –	
employer’s, not bar to liability, article 1 .....	3
termination of, article 2.....	11

Contractor, liability for subcontractor, when .....	79
Contributions –	
mutual funds stock carrier .....	108, 115
Costs –	
on appeal .....	66
trial .....	64
Counsel, assignment on appeal .....	66
Counsel fees –	
allowance .....	64
appeal .....	66
approval of .....	26, 64
article 1 .....	6
certiorari (Repealer) .....	67
defined, third party cases .....	40e
effect of offer on .....	64
third party cases .....	40
County clerk –	
filing fees .....	63
notice of appeal .....	66
Judgment copy .....	69
County employees, subject to act .....	43
Courts, (See Bureau*, County Court, Superior Court, Supreme Court)	

## D

Death –	
compensation dependence rate .....	13
double benefits, minor .....	10
from causes other than by accident.....	12e
occupational disease.....	30
of dependent.....	13f
of employer .....	82, 86
payments for.....	13h, 21
payments to guardian, etc. ....	21
statute of limitations, article 1.....	4
Debt, commutation prohibited to satisfy .....	25
Default, insolvent stock carrier .....	111
Defenses –	
abolished, article 1 .....	2
article 2 .....	7
reservation of, jurisdictional limitations .....	16
Definitions –	
attorney’s fee .....	40e
casual employment .....	36
dependents .....	13f
employee .....	36
employer .....	36

expense of suit, third party cases .....	40c
occupational diseases .....	31
perjury .....	61
permanent partial disability .....	36
ridesharing .....	36
wages .....	37
waiting period .....	14
willful negligence .....	36
workmen's comp security fund act .....	104
Delayed payments, interest on .....	28
Dependency –	
conclusively presumed, when .....	13f
distribution of compensation .....	13g
maximum, minimum rate .....	13f, 13j
minors .....	13f
partial .....	13f
period of .....	13i
total .....	13f
Dependents –	
age limit .....	13f, 13i, 13j
compensation, computed.....	13
death of .....	13f
defined .....	13f
partial .....	13g, 13f
payments to .....	12e, 21
physically and mentally deficient .....	13I
rate adjustments .....	95.4
wholly .....	13f
Deposition of absent witness .....	65
Destruction of old records authorized.....	121, et seq.
Determination and rule for judgment .....	22
reopened.....	22
Diminished disability .....	27
Director, judges to be attorneys C:341A-12.1	
Disability –	
commencement of .....	14
diminished .....	27
increased .....	27
payments, commencement of .....	14
permanent partial .....	12c, 12c22
permanent total .....	12b, 12c20, 12d
previously existing fund.....	95
temporary .....	12a
total .....	12b, 12c20, 12d
Disability benefits –	
duplicate payments .....	57.1

inquiry of employee .....	57.2
notice of employer .....	57.2
reimbursement .....	57.1
Discontinuances, power of referee.....	54.1
Discount, denied as penalty, when .....	66.1
Discrimination .....	39.1
Disease –	
occupational, defined .....	31
Dismissal of petition –	
lack of prosecution .....	54, 54.1
notice of .....	54, 54.1
reinstatement .....	54, 54.1
Dispute, submission to bureau* .....	20
Docket, contents .....	59
Docketing judgment, superior court .....	66.1
Domestic servants exempt from provision of compulsory insurance act .....	92
Double compensation or death benefit .....	10
Duplicate disability benefit payments –	
reimbursement.....	57.1

## E

Ear .....	12c, 12c22, 12d19
Earnings – (See Wages)	
Education, board of, employees, subject to act .....	43
Election, surrender of other remedies .....	8
Elective compensation .....	7 et seq.
Elective officers not subject to act .....	43
Emergency squad worker –	
doing public duty, insurance for .....	74
Employee –	
defined.....	36
inquiry of temporary disability benefits.....	57.2
refusal of medical or surgical treatment.....	23
waiver of compensation, agreements void.....	39
Employer –	
defined .....	36
knowledge of accident and injury .....	17, 85
knowledge of occupational disease .....	33
liability, article 1 .....	3
liability, compulsory insurance law .....	70 et seq.
liability, double compensation .....	10
liability, for medical .....	15
liability for compensation, discharge of .....	69.1, 82
notice of occupational disease .....	33
post notice of insurance .....	80

right to sue third party.....	40
self insured .....	77
Employment –	
casual.....	36, 43.1
illegal .....	10
minor, penalty .....	10
public .....	43, 43.1
Enucleation of eye .....	12c17
Evidence –	
assumption of risk, article 1 .....	2
conclusive, employment certificate .....	10
fellow servant rule, article 1 .....	2
of age, minor .....	10
presumption .....	13f
reports, not admissible .....	99
rule of, not applicable .....	56
Examination –	
medical .....	19, 27
physical .....	19, 27, 68
refusal of employee, right of compensation	
suspended .....	19
rehabilitation commission, ordered by.....	12b
X-ray .....	19
Execution –	
failure to pay award .....	66.1
payments exempt from .....	29
stay of.....	66
Executor, payments to.....	21
Ex parte affidavits.....	56
Expenses –	
of suit, third party cases .....	40
second injury fund, administration .....	95
Eye –	
enucleation of .....	12c17
glass.....	15
loss of both.....	12c20, 12d
loss of function .....	12c22, 12d
loss of vision .....	12c16

## F

Failure to insure, penalty .....	79
Failure to pay compensation, execution.....	66.1
Father –	
as guardian .....	46
dependent .....	13f, 13I

Fault – (See Negligence)	
Fees –	
allowance .....	64
appeal .....	66, 67
approval of .....	26, 64
article 1 .....	6
attorneys’ .....	26, 40, 64
attorneys’ on appeal .....	66, 67
certiorari (Repealer) .....	67
defined, third part cases .....	40e
filing .....	63
medical .....	15
medical witness .....	64
witness .....	60, 64
Fellow servant rule abolished .....	2
Females, examination of .....	68
Filing	
answer .....	52
determination on appeal .....	66
fees .....	63
judgment, effect .....	58
order to discharge employer, effect .....	69.2
petition, timeliness .....	34, 41, 41.1, 51
rates .....	88
record .....	66
transcript .....	66
Fine – (See Penalty)	
Firemen, Volunteer –	
governed by act .....	76
insurance for .....	74
doing public duty, subject to act .....	43
wages determined .....	75
First aid squad workers –	
doing public duty, subject to act .....	43
insurance for .....	74
Foot .....	12c10, 12c20, 12c21, 12c22, 12d
Forest fire fighters, forest fire wardens -	
basis for compensation of .....	36
subject to provisions of act .....	36
Form of notice of accident .....	18
Fund –	
compensation security .....	13 et seq.
second injury .....	94
Funeral expenses .....	12c, 13h

## G

rev. date January 17, 2010

Glass eye .....	15
Governmental employees subject to act .....	43
Grandchildren, dependents .....	13f
Grandparents, dependents .....	13f
Gratuities .....	37
Guardian –	
ad litem.....	45
ad litem, payments to .....	51
ad litem, petition by .....	51
appointment of .....	45
compromise of claim.....	45
payment to.....	13g, 21, 46, 51
petition by .....	51

## H

Half-brothers, dependents .....	13f
Half-sisters, dependents .....	13f
Hand.....	12c8, 12c20, 12c21, 12c22, 12d
Handicapped persons, rehabilitation of.....	12b, 95
Hearing, loss of .....	12c19, 12c22, 12d, 35.10 et seq.
Hearings –	
adjournment .....	53
appeal, time and place .....	66
public .....	62
summary.....	57
time, place and notice of .....	53
Hernia –	
notice to employer of .....	12c23, 12d
traumatic .....	12c23, 12d
Homeowners .....	92
Horseplay .....	7.1
Horse Racing Injury Compensation Board .....	129 et seq.
Hospital expenses –	
death .....	13h
Hospital records open inspection.....	15
Hospital service .....	115, 15.2
Hourly wage .....	37
Husband, dependent.....	13f, 13I

## I

Illegal employment of Minors .....	10
Illegitimate children, dependents .....	13f
Impairment of physical function.....	12c22, 12d

Increased disability .....	27
Independent contractor.....	36
Indigent persons, assignment of counsel on appeal .....	66
Industries – (See Employment)	
Infant – (See Minors, Children)	
Injury	
knowledge of employer.....	17, 85
notice of .....	17, 85
Insane, payments for .....	48
Insolvency –	
of employer, carrier directly liable.....	82, 96
security fund against, insurance carrier .....	103 et seq.
Insurance -	
compulsory.....	70 et seq.
failure to carry, penalty .....	79
notice of, filed .....	78
proof of compliance .....	73
self-insurance .....	77
Insurance benefits, other, not bar to compensation.....	40
Insurance carrier –	
agreement, effect .....	34, 51
assessment of .....	94
joinder of.....	84
jurisdiction of.....	85
knowledge of injury .....	85
knowledge of occupational disease.....	33
liability of, direct.....	82, 86
not liable for extra compensation or death benefit.....	10
notice of occupational disease .....	33
premium returns .....	106
reports by .....	98, 100
right to sue third party.....	40
security funds against insolvency of .....	103 et seq.
Insurance policy –	
cancellation of.....	81
enforcement of .....	83, 84
limitations and restrictions.....	10, 87
Intentionally self-inflicted injuries.....	7
Interest –	
not deductible, when .....	66.1
on delayed payments.....	28
Intoxication –	
of employee, as defense .....	7
of employee, as willful negligence .....	36

**J**

rev. date January 17, 2010

Jockeys, all occupations, definitions.....	131
Joinder of insurance carrier.....	84
Judges of Compensation .....	49
Judgment –	
conclusive, exception.....	58
contents .....	58
docketed, superior court.....	66.1
fees and costs on appeal.....	67
filing, effect of .....	58
notification of.....	58
satisfaction of.....	58
Jurisdiction –	
claims .....	49
of insurance carrier .....	85
referees .....	49

**K**

Knowledge of employer	
of accident.....	17, 85
of injury.....	17, 85
of occupational disease .....	33
of occupational disease, deemed knowledge of carrier .....	33
Knowledge of Insurance carrier –	
of accident.....	85
of injury.....	85
of occupational disease .....	33
of occupational disease, deemed knowledge of employer.....	33

**L**

Lack of prosecution, dismissal of petition .....	54, 54.1
Leg .....	12c11, 12c20, 12c21, 12c22, 12d
Legal services – (See Attorneys’ fees, Counsel Fees, Fees)	
Legally deficient, payment for.....	48
Levy, payments exempt from .....	29
Liability –	
contractor .....	79
double compensation, minors .....	10
employer, article 1 .....	3
insurance carrier.....	82, 86
third party.....	40
Lien –	
for fees, article 1 .....	6
preference of right of compensation .....	29
Limb, artificial .....	15

Limitations –	
determination, county court .....	66
during war .....	41.1
filing petition.....	34, 41.1, 51
modification of award.....	27
notice of injury .....	17, 85
notice of occupational disease .....	33
review of award.....	27
statutes of limitations .....	34, 41, 51
Lodging and board, inclusion as wages .....	37
Loss of use of member or impairment of physical function .....	12c22, 12d
Lump sum payment in trust .....	24

## M

Major members, loss of any two.....	12c20, 12d
Maximum –	
compensation dependency rate .....	13f, 13j
compensation rate .....	12a, 12b
temporary disability .....	12a
total disability.....	12b
Medical and surgical –	
examinations .....	19, 27
expenses, death .....	13b
expenses, third party cases.....	40
fees .....	15
payment of, after compensation payments terminated .....	16
period of .....	15
petition for treatment.....	15
refusal of employee to accept .....	23
refusal of employer to furnish .....	15
treatment .....	15
witness fees .....	64
Mentally deficient –	
as dependents .....	13I
payments to .....	48
Merit rating .....	89
Microfilms,	
as evidence .....	126
of records .....	125
Minimum –	
compensation, dependency rate .....	13f, 13j
compensation rate .....	12a, 12b
compensation rate, exception.....	12b
temporary disability .....	12a
total disability.....	12b

week .....	37
Minors – (See also Children)	
age .....	10
dependency of .....	13f
employment of .....	10
guardian for .....	45
payment, dependency .....	13g
payments for.....	46, 51
petition by .....	51
recovery of damages in common law action.....	10
Missing persons, payments for .....	48
Modification –	
agreement.....	27
award.....	23, 57
award, time limit .....	27
Mother –	
as guardian .....	46
dependent .....	13f, 13I
Municipal employees, subject to act.....	43
Mutual agricultural insurance companies not affected .....	95.3

## N

Neglect of treatment.....	15
Negligence –	
article 1.....	1, 5
employer .....	7, 10
occupational disease .....	30
willful, defined, article 2 .....	36
Nephew, dependent .....	13f
compromise of claims .....	45
payments to .....	51
petition by .....	51
Niece, dependent.....	13f
Nonacceptance of article 2.....	9
Nonresidents, service on .....	55.1
Notice –	
accident .....	17, 85
appeal and filing of .....	66
cancellation of policy.....	81
form of .....	18
hearing.....	53
hernia .....	12c23
injury .....	17, 85
occupational disease, to employer and carrier .....	33
occupational disease, written .....	33

of insurance filed.....	78
of insurance posted .....	80
of nonacceptance of article 2 .....	9
service of .....	18
sufficiency of .....	18
to dismiss petition .....	54
to employer, hernia .....	12c23
to employer, temporary disability benefits .....	57.2
to terminate under article 2 .....	11
to third party .....	40
Notification, judgment .....	58

## O

Oaths .....	61
Occupational disease –	
commencement of .....	33
compensation for .....	30
compensation payable .....	32
defined .....	31
hearing loss .....	35, 10
knowledge of, carrier .....	33
knowledge of employer .....	33
limitation, filing petition .....	34, 41.1
negligence .....	30
notice of, written, to carrier .....	33
provisions applicable .....	35
self-exposure, willful, to known hazard.....	30
statute of limitations.....	34
time limit, filing petition .....	34, 41.1
Offer, effect of an attorney’s fee.....	64
Officers, elective, subject to act.....	43
Order discharging employer .....	69.2
Output in determining wage.....	37

## P

Papers, service of .....	55
Parents –	
dependents.....	13f, 13i
guardian, payment to .....	46
Part payment, effect .....	34, 51
Partial dependency .....	13f
Partial disability, permanent .....	12c, 12c22, 12d, 36
Paupers, assignment of counsel on appeal .....	66
Payment –	

award in trust .....	24
commutation of .....	25
effect .....	34 , 51
exempt from attachment, execution and levy .....	29
for infant, minor .....	46, 51
interest on .....	28
legally deficient .....	48
mentally deficient .....	48
missing persons.....	48
not assignable .....	29
occupational disease, commencement of .....	33
order of .....	16
physically deficient .....	48
retroactive .....	14
second injury fund .....	95
schedule .....	12, 13
to dependents .....	12c13
to father as guardian .....	46
to guardian .....	13g, 46, 51
to guardian ad litem .....	51
to minor dependents.....	13g
to mother as guardian.....	46
to next friend.....	51
workmen's' compensation security fund .....	103 et seq.
Payroll, public employees .....	44
Penalty –	
contempt.....	60
employment of minors .....	10
failure to file report .....	101
failure to pay compensation .....	66.1
insurance carrier .....	88
refusal of examination .....	19
Period of dependency.....	13i, 13j
Perjury, definition .....	61
Permanent partial disability .....	12c, 12c22, 12s, 36
Permanent total disability .....	12b, 12c20, 12e
Permanent total disability, second injury fund .....	95
Petition –	
abandonment of, dismissal .....	95
allegations .....	51
answer to .....	52
assigned with answer to deputy commissioner*or referee .....	53
by infant, minor .....	51
contents .....	51
copy of, served on employer .....	52
dismissal of, lack of prosecution.....	54, 54.1

filing of .....	34, 41, 41.1; 50, 51
for treatment .....	23
occupational disease .....	34
reinstatement of previously dismissed.....	54, 54.1
Phalanges, compensation for loss of.....	12c12, 12c13, 12c14, 12c15
Physical examination –	
employee .....	12b, 19
employee’s physician may participate .....	19
female.....	68
refusal of, penalty .....	19
Physically deficient –	
dependent .....	13i
payments .....	48
Physician –	
employee’s.....	19, 68
examination of female .....	68
request for .....	15
Piecework wage .....	37
Place and time for appeal hearing.....	66
Place of hearing.....	53
Policy, insurance, cancellation of .....	81
Posthumous child, dependent.....	13f
Posting of notice of insurance by employer.....	80
Prerogative writ .....	66
Presumption –	
as to acceptance of article 2 .....	9
dependency wife and children, conclusive .....	13f
Primary liability of employer .....	82
Procedure in case of dispute .....	20
Proof of compliance, compulsory insurance act .....	73
Prosecution, failure of, dismissal .....	54
Public employees –	
injured, on payroll.....	44
relief workers .....	43.1
retired for injury or disability, not subject to act .....	43
subject to act .....	36, 43
Public hearings.....	62
Public records.....	39
inspection .....	128

## R

Rate –	
compensation .....	12a, 12b
dependency .....	13f, 13j
reduction .....	95.5
wage .....	37

rev. date January 17, 2010

Rates, classified and approved .....	88
Rating and inspection bureau .....	88, 89, 90
Record –	
filing of, on appeal .....	66
of case, filed .....	59
Records –	
confidentiality .....	128
destruction authorized .....	121 et seq.
hospital, right of examination .....	15
public .....	59
Recreational Activities .....	7
Referees, formal, to be attorneys, exception .....	49
Referees, formal, powers .....	54.1
Refusal –	
examination, penalty .....	19
treatment, penalty .....	15, 23
Registered mail, as service .....	55
Regulations and rules .....	64
Rehabilitation .....	12b
Reimbursement –	
by subcontractor, when .....	79
disability benefit payments .....	57.1
third party cases .....	40
Reinstatement of previously dismissed petition .....	54, 54.1
Releases invalid, when .....	39
Relief work, casual employment .....	43.1
Remarriage of widow .....	13f
Reopening, award .....	27
Repayment of medical and hospital benefits .....	15.1
Reports –	
as evidence .....	99
by employer .....	96
to employer carrying own insurance .....	97
by insurance carrier .....	98
by mutual carrier .....	113
by stock carrier .....	109
destruction authorized .....	121 et seq.
filed .....	96, 97, 98
medical .....	100
not public .....	99
Representative, appointment of .....	48
Request for treatment by employee .....	15
Rescue squad worker –	
doing public duty, subject to act .....	43
insurance for .....	74
Retired public employee not subject to article 2 .....	43

Retroactive payments.....	14
Review of awards, time limit.....	27
Ridesharing.....	36
Rescue squad worker –	
doing public duty, subject to act.....	43
insurance for.....	74
Retired public employee not subject to article 2.....	43
Retroactive payments.....	14
Review of awards, time limit.....	27
Ridesharing.....	36
Right to action –	
article 1.....	1
minor, article 2.....	10
Risk, assumption of, article 1.....	2
Risks, classified (See also Employment).....	88
Rules and regulations.....	64, 102
Rules of evidence.....	56

## S

Safety devices.....	7
Salaries (See Wages)	
Salary, deputy commissioner*.....	49
Sale of business.....	69.1
Satisfaction —	
of award.....	24
of judgment.....	58
Schedule –	
of compensation.....	12
of compensation rates temporary disability Jan. 1, 1951 – Dec. 31, 1956.....	
permanent disability Jan. 1, 1956 – Jan. 1, 1980.....	
temporary disability Jan. 1, 1971 – Dec. 31, 1984.....	
permanent partial Jan. 1, 1980 – Dec. 31, 1980.....	
of dependency payments.....	13
of disabilities rating.....	89
Second Injury Fund –	
amount of fund.....	94
application of benefits.....	95.1
assessment for benefit of.....	94
benefits.....	95, 95.1
cost of administration.....	95
created.....	94
disposition of funds collected.....	95
hearing by deputy commissioner*.....	95.1
payments to commissioner of labor*.....	94
previous payments validated and confirmed.....	95

rev. date January 17, 2010

review of decision .....	95.1
Secretary of bureau* —	
certification of transcript.....	66
nonresidents, service of papers .....	55.1
notice of appeal.....	66
Self-exposure, willful, occupational disease.....	30
Self-inflicted injuries .....	7
Self-insurers guarantee association .....	120.15 et seq.
Self-insurance requirements .....	77
Security –	
compensation , employer’s methods.....	70 et seq.
insurance carrier, insolvency funds.....	103 et seq.
Servants, domestic, compulsory insurance not applicable.....	92
Service –	
of notice .....	18
of papers.....	55
on nonresidents .....	55.1
petition .....	52
registered mail.....	55
Sisters, dependents.....	13f
Skylarking.....	7.1
Special benefits to veterans.....	12.1 to 12.6
State Board of Children’s Guardians –	
representative for child beneficiary .....	48
State employees, subject to act .....	43
Statute of limitations –	
article 1.....	4
injury .....	41
modification of award .....	27
occupational disease .....	34
petition .....	34, 51
review of award .....	27
Stay of execution.....	66
Stepchildren, dependents .....	13f
Step-parents, dependents .....	13f, 13i
Stock Fund –	
created.....	110
administered.....	119
Subcontract of employer no bar to liability	
article 1.....	3
Subcontractor uninsured, contractor liable .....	79
Subpoenas, witness .....	60
Subrogation, third party cases.....	40
Summary hearing .....	57
Summer camps, employment of minors .....	10
Supplementary proceedings.....	66.1

Superior Court –	
appeal .....	66
docketing judgment .....	66.1
Surety Bond .....	120
Surgeons.....	15
Suspension of compensation.....	19

## T

Teeth .....	12c18, 12c22, 12d
Teeth, artificial.....	15
Temporary –	
compensation, beginning of.....	38
compensation, ending of .....	38
disability.....	12a
disability, beginning of .....	38
disability, ending of .....	38
disability, method of calculating compensation for.....	38
Trial of appeal.....	66
Trust funds .....	24
Trust, expenses of administration .....	24
Trustee, appointment of .....	24
Two major members, loss of.....	12c20

## U

Unlawful discharge .....	39.1
Uninsured fund.....	120.1 et al

## V

Vested right, no .....	95.2
Veteran’s special benefits –	
application for .....	12.4
computing amount of .....	12.3
conditions necessary .....	12.1, 12.5
fund for payment of .....	12.2
time for filing application for.....	12.6
Vision, loss of .....	12c16, 12c17, 12,20, 12c22, 12d
Vocational training.....	12b
Volunteer firemen –	
governed by act .....	76
insurance for .....	74, 74.1
wages determined.....	75
doing public fire duty, subject to act .....	43
respiratory diseases .....	43.2, 43.3

rev. date January 17, 2010

Volunteers .....	43.4
------------------	------

**W**

Wages –	
board and lodging .....	37
computation.....	37
defined.....	37
earning capacity, determination .....	12b
gratuities.....	37
piecework.....	37
volunteer firemen .....	75
Waiting period .....	14, 16, 38
Week, minimum.....	37
Weekly wage.....	37
Wholly dependent .....	13f
Widow –	
dependent .....	13f, 13i
remarriage .....	13f
Wife, dependent .....	13f, 13i
Willful negligence –	
article 1 .....	1, 5
article 3 .....	36
Willful self-exposure, occupational disease .....	30
Witness –	
absent, deposition of .....	65
fees .....	60, 64
subpoena .....	60
Words and phrases (See Definitions)	
Work First New Jersey Act**	
Work relief employees, not subject to act .....	43.1
Working certificate, minor .....	10
Working hours .....	37
Workmen or operatives (See Employees)	
Workers’ Compensation Bureau (See Bureau)*	
Writ, proceeding in lieu of	
prerogative .....	66
appeal.....	66
Written notice of nonacceptance of article 2 .....	9

**X Y Z**

X-ray examination .....	19
-------------------------	----

\* See “Foreword”

\*\* Refers to C.44:10-65-70.