

SENATE, No. 613

STATE OF NEW JERSEY 215th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2012 SESSION

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

Co-Sponsored by:

Senators Beach, Norcross, Greenstein, Weinberg and Vitale

SYNOPSIS

Concerns certain workers' compensation supplemental benefits.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 3/6/2012)

1 AN ACT concerning workers' compensation benefits and
2 supplementing chapter 15 of Title 34 of the Revised Statutes.

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

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7 1. a. Beginning with the fiscal year 2012, commencing July 1,
8 2011, and each fiscal year thereafter, a person who is an employee,
9 or a dependent of the employee, who is receiving weekly benefits
10 pursuant to subsection (b) of R.S.34:15-12, R.S.34:15-13, or
11 R.S.34:15-95 for a disability or death that occurred after December
12 31, 1979, and who is not entitled to receive special adjustment
13 benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-95.4),
14 shall be entitled to receive weekly supplemental benefits from the
15 Second Injury Fund during the period in which the person is eligible
16 to receive the initially-awarded weekly benefits, whenever the
17 amount of the initially-awarded weekly benefits is less than the total
18 amount of weekly benefits that would be payable to the person if
19 that total amount included weekly supplemental benefits calculated
20 in the manner indicated in subsection b. of this section. In making
21 the determination of the aggregate annual surcharge for the Second
22 Injury Fund to be levied pursuant to paragraph (4) of subsection c.
23 of R.S.34:15-94 for calendar year 2011 and each subsequent
24 calendar year, the commissioner shall include the anticipated
25 additional amounts, including administrative costs, required for
26 payment of supplemental benefits pursuant to this section during the
27 fiscal year which begins on July 1 of the respective calendar year.

28 b. The base amount of the weekly supplemental benefits to be
29 paid pursuant to this section during each fiscal year shall be
30 calculated in a manner so that when it is added to the workers'
31 compensation weekly benefits initially awarded, the sum of the
32 initial award and the base weekly supplemental benefits shall bear
33 the same percentage relationship to the maximum workers'
34 compensation rate for the current fiscal year that the person's initial
35 compensation bore to the maximum workers' compensation rate in
36 effect at the time of the injury or death. The actual amount of the
37 supplemental benefits paid pursuant to this section shall be 33 1/3%
38 of the base amount during fiscal year 2012; 66 2/3% of the base
39 amount during fiscal year 2013; and 100% of the base amount
40 during fiscal year 2014 and thereafter, except that:

41 (1) The actual amount of the supplemental benefits paid
42 pursuant to this section shall be reduced if necessary, and as much
43 as is needed, to ensure that the sum of disability benefits provided
44 under the Federal Old Age, Survivors and Disability Act, the
45 weekly supplemental benefits and the workers' compensation
46 initially awarded does not, with respect to any particular case,
47 exceed the amount which would cause any reduction pursuant to 42

1 U.S.C. 424a of disability benefits payable under the Federal Old
2 Age, Survivors and Disability Act;

3 (2) The actual amount of the supplemental benefits paid
4 pursuant to this section to any individual shall be reduced by an
5 amount equal to the individual's benefit payable under the Federal
6 Old-Age, Survivors' and Disability Insurance Act (except for
7 disability benefits paid under that act and any increases in benefits
8 under that act due to federal statutory changes after May 31, 1980),
9 Black Lung benefits, or the employer's share of disability pension
10 payments received from or on account of an employer, except that
11 the supplemental benefit paid to the individual shall not be reduced
12 pursuant to this paragraph (2) if the workers' compensation benefits
13 of the individual on which the supplemental benefit is based are
14 reduced pursuant to section 9 of P.L.1980, c.83 (C.34:15-95.5); and

15 (3) A supplemental benefit shall not be paid if the actual amount
16 of the benefit to be paid is calculated to be less than \$5 per week.

17 c. Notwithstanding any other provision of this section, weekly
18 supplemental benefits paid pursuant to this section shall not be paid
19 in a manner which in any way changes or modifies the provisions of
20 sections 1 or 9 of P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5).

21 d. An insurance carrier or self-insured employer responsible for
22 the payment of workers' compensation to an individual shall notify
23 the Division of Workers' Compensation of the need to have the
24 Second Injury Fund make supplemental benefit payments to the
25 individual pursuant to this section not later than the 60th day after
26 the date on which it is determined that the payment of supplemental
27 benefits is required pursuant to this section. If the insurance carrier
28 or self-insured employer fails to notify the division and that failure
29 results in the payment of an incorrect amount of benefits, the
30 liability for the payment of the supplemental benefits shall be
31 transferred from the Second Injury Fund to the employer until the
32 time at which the insurance carrier or self-insured employer
33 provides the required notice.

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35 2. This act shall take effect immediately.

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STATEMENT

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40 This bill provides, from July 1, 2011 forward, an annual cost of
41 living adjustment (COLA) in the weekly workers' compensation
42 benefit rate for any worker who has become totally and permanently
43 disabled from a workplace injury at any time after December 31,
44 1979 and for the surviving dependents of any worker who died from
45 a workplace injury after December 31, 1979.

46 The COLA would be an amount such that, when added to the
47 workers' compensation weekly benefit rate initially awarded, the

1 sum will bear the same percentage relationship to the maximum
2 benefit rate at the time of the adjustment that the initial rate bore to
3 the maximum rate at the time of the initial award, except that:

4 1. The bill reduces the amount of the adjustment as much as
5 necessary to ensure that the sum of the adjustment and the amount
6 initially awarded does not exceed the amount which would cause
7 any reduction of disability benefits payable under the Federal Old
8 Age, Survivors and Disability Act; and

9 2. The bill reduces the supplemental workers' compensation
10 benefits (but not regular workers' compensation) for claimants
11 injured after 1979 by the amount of any Social Security benefits
12 (other than Social Security disability benefits and any increases in
13 Social Security benefits due to federal statutory changes after May
14 31, 1980), Black Lung benefits, or the employer's share of
15 disability pension payments received from or on account of an
16 employer, except that if the worker's original workers'
17 compensation award was already reduced under current law, there
18 would be no further reduction of the supplemental benefits under
19 the bill.

20 These reductions parallel the reductions provided under current
21 law for claimants who were injured before 1980. The bill also
22 provides that no supplemental benefits would be paid in any case
23 where they are calculated to be less than \$5 per week.

24 Current law requires such annual adjustments in the rate of
25 workers' compensation benefits for death and permanent total
26 disability to be paid from the Second Injury Fund (SIF), but only
27 for cases of injury or death occurring before January 1, 1980. The
28 bill extends the adjustments paid from the SIF to claims originating
29 after December 31, 1979, although the adjustments would apply
30 only to benefits paid on those claims after July 1, 2011, thus
31 avoiding a backlog of retroactive benefits.

32 The bill provides that supplemental payments will commence
33 only after SIF assessments are sufficient to pay them without using
34 General Fund money. The supplemental benefit payments would
35 start on July 1, 2011 and the Department of Labor and Workforce
36 Development is required to take into account the supplemental
37 benefits when calculating the amount of the Second Injury Fund
38 assessment which starts on January 1, 2011, thus avoiding the need
39 for any General Fund appropriation.

40 To avoid an abrupt fiscal impact on the workers' compensation
41 system, the bill provides that one third of the supplemental benefit
42 rate be paid during the first year, two thirds of the rate be paid
43 during the second year and the full amount be paid during the third
44 and subsequent years.

45 The bill sets time limits for workers' compensation insurers and
46 self-insured employers to notify the SIF when supplemental
47 workers' compensation benefits are required under the bill. An

1 insurer or self-insured employer is required to provide the notice
2 not more than 60 days after the supplement is awarded or voluntary
3 payment is to begin. If a failure to notify results in the payment of
4 an incorrect amount of benefits, the liability for the payment of the
5 supplemental benefits is transferred from the SIF to the insurer or
6 employer until the required notice is provided.

7 The bill makes no change in the provisions of sections 1 and 9 of
8 P.L.1980, c.83 (C.34:15-95.4 and 34:15-95.5), which provide for
9 the reduction of certain portions of workers' compensation benefits
10 by the amount of Social Security disability benefits paid. In
11 addition, the bill expressly states that the supplemental benefits
12 shall not be paid in a manner which in any way changes or modifies
13 the provisions of those sections. The bill, therefore, will have no
14 effect on existing provisions of State and federal law regarding
15 offsets between workers' compensation and federal Social Security
16 disability benefits.