

SENATE, No. 281

STATE OF NEW JERSEY
219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Senator JOSEPH PENNACCHIO

District 26 (Essex, Morris and Passaic)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns certain workers' compensation supplemental benefits for surviving dependents of public safety workers who die in the line of duty.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** concerning certain workers' compensation benefits for
2 surviving dependents of public safety workers and
3 supplementing chapter 15 of Title 34 of the Revised Statutes.

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

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

29 b. The base amount of the weekly supplemental benefits to be
30 paid pursuant to this section during each fiscal year shall be
31 calculated in a manner so that when it is added to the workers'
32 compensation weekly benefits initially awarded, the sum of the
33 initial award and the base weekly supplemental benefits shall bear
34 the same percentage relationship to the maximum workers'
35 compensation rate for the current fiscal year that the individual's
36 initial compensation bore to the maximum workers' compensation
37 rate in effect at the time of the death, except that:

38 (1) The actual amount of the supplemental benefits paid
39 pursuant to this section to any individual shall be reduced by an
40 amount equal to the individual's benefit payable under the Federal
41 Old-Age, Survivors' and Disability Insurance Act
42 (42U.S.C. s.401 et al.) (except for disability benefits paid under that
43 act and any increases in benefits under that act due to federal
44 statutory changes after May 31, 1980), Black Lung benefits, or the
45 employer's share of disability pension payments received from or
46 on account of an employer, except that the supplemental benefit
47 paid to the individual shall not be reduced pursuant to this
48 paragraph (1) if the workers' compensation benefits of the

1 individual on which the supplemental benefit is based are reduced
2 pursuant to section 9 of P.L.1980, c.83 (C.34:15-95.5); and

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

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

9 d. An insurance carrier or self-insured employer responsible for
10 the payment of workers' compensation to an individual shall notify
11 the Division of Workers' Compensation of the need to have the
12 Second Injury Fund make supplemental benefit payments to the
13 individual pursuant to this section not later than the 60th day after
14 the date on which it is determined that the payment of supplemental
15 benefits is required pursuant to this section. If the insurance carrier
16 or self-insured employer fails to notify the division and that failure
17 results in the payment of an incorrect amount of benefits, the
18 liability for the payment of the supplemental benefits shall be
19 transferred from the Second Injury Fund to the employer until the
20 time at which the insurance carrier or self-insured employer
21 provides the required notice.

22 e. For the purposes of this section, "public safety worker"
23 means a member, employee, or officer of a paid, partially-paid, or
24 volunteer fire or police department, force, company or district,
25 including the State Police or a first aid or rescue squad.

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27 2. This act shall take effect immediately.

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STATEMENT

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32 This bill provides, from July 1, 2011 forward, an annual cost of
33 living adjustment (COLA) in the weekly workers' compensation
34 benefit rate for any surviving dependents of any public safety
35 worker who died in the line of duty after December 31, 1979. The
36 bill defines "public safety worker" as a member, employee, or
37 officer of a paid, partially-paid, or volunteer fire or police
38 department, force, company or district, including the State Police or
39 a first aid or rescue squad.

40 The COLA would be an amount such that, when added to the
41 workers' compensation weekly benefit rate initially awarded, the
42 sum will bear the same percentage relationship to the maximum
43 benefit rate at the time of the adjustment that the initial rate bore to
44 the maximum rate at the time of the initial award, except that the
45 bill reduces the supplemental workers' compensation benefits (but
46 not regular workers' compensation) for claimants injured after 1979
47 by the amount of any Social Security benefits (other than Social
48 Security disability benefits and any increases in Social Security

1 benefits due to federal statutory changes after May 31, 1980), Black
2 Lung benefits, or the employer's share of disability pension
3 payments received from or on account of an employer, except that if
4 the worker's original workers' compensation award was already
5 reduced under current law, there would be no further reduction of
6 the supplemental benefits under the bill.

7 These reductions parallel the reductions provided under current
8 law for surviving dependents of public safety workers who died in
9 the line of duty before 1980. The bill also provides that no
10 supplemental benefits would be paid in any case where they are
11 calculated to be less than \$5 per week.

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

20 The bill provides that supplemental payments will commence
21 only after SIF assessments are sufficient to pay them without using
22 General Fund money. The supplemental benefit payments would
23 start on July 1, 2011 and the Department of Labor and Workforce
24 Development is required to take into account the supplemental
25 benefits when calculating the amount of the SIF assessment which
26 starts on January 1, 2011, thus avoiding the need for any General
27 Fund appropriation.

28 The bill sets time limits for workers' compensation insurers and
29 self-insured employers to notify the Division of Workers'
30 Compensation when supplemental workers' compensation benefits
31 are required from the SIF under the bill. An insurer or self-insured
32 employer is required to provide the notice not more than 60 days
33 after the supplement is awarded or voluntary payment is to begin.
34 If a failure to notify results in the payment of an incorrect amount
35 of benefits, the liability for the payment of the supplemental
36 benefits is transferred from the SIF to the insurer or employer until
37 the required notice is provided.

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