

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 1522

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 17, 2003

The Senate Budget and Appropriations Committee reports favorably and with committee amendments Senate Bill No. 1522 (1R).

This bill revises the workers' compensation law to (i) enhance, in some cases, the amount of the death benefit payable under the law, and (ii) provide that certain claims for an asbestos-related occupational disease shall be payable from the uninsured employer's fund.

Death benefit rate. The bill provides that the standard workers' compensation death benefit for surviving dependents shall be 70 percent of the employee's wages, regardless of the number of dependents. Currently, these benefits are set at 50 percent of the employee's wages for one surviving dependant, plus 5 percent for each additional dependant up to a maximum of 70 percent.

Liability for asbestos-related claims. The bill provides that in the case of a claim for compensation for an occupational disease resulting from exposure to asbestos, compensation shall be made from the uninsured employer's fund if, after due diligence

- < (1) The workers compensation insurer, 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 the time in which the exposure to asbestos may reasonably be deemed to have taken place, but the employer or employers where the petitioner was last exposed cannot reasonably be identified.

Compensation would be based on the date of last exposure if known or, if not known, as determined by a workers' compensation judge. To ensure sufficient funding for the prompt payment of these claims, the bill directs that moneys necessary to cover them be transferred each calendar quarter to the uninsured employer's fund from the Second Injury Fund. The uninsured employer's fund would have a right of subrogation against any insurer or employer identified as liable or against the appropriate compensation security fund.

The bill also repeals R.S.34:15-33, which requires the worker or

the worker's dependents to notify the employer within five months after an exposure to an occupational disease ends, or within 90 days after the worker knew or should have known about the disease and its relation to the employment, whichever is later. Any claim for compensation would still be subject to the provisions of R.S.34:15-34, which require claims for compensation for occupational disease to be filed within two years after the claimant first knew the nature of the disability and its relation to the employment.

COMMITTEE AMENDMENTS

Committee amendments to this bill: (1) substitute the uninsured employer's fund for the Second Injury Fund as the fund directly liable for payment of asbestos injury-related compensation under the legislation; (2) provide for periodic transfers of moneys from the Second Injury Fund to the uninsured employer's fund to fund claims for such compensation; and (3) extend the list of entities from which the uninsured employer's fund may obtain subrogation for those claims to include the New Jersey Self-Insurers Guaranty Association.

FISCAL IMPACT

The Office of Legislative Services (OLS) estimates that the provisions of the bill establishing a uniform death benefit formula will cost the State approximately \$80,000 a year. This estimate is based upon the conservative assumption that decedents on whose behalf workers' compensation death benefits are payable are survived, on average, by two dependents (e.g., wife and one child). Generally, the benefit payable under current law in such cases is 55 percent of the decedent's weekly wage; under the bill, the benefit in such a case would rise to 70 percent of such wages. The average payment would not, however, actually increase by 15 percent of weekly wages, because all periodic workers' compensation benefit payments are capped at 75 percent of the average compensation for all workers. For purposes of the analysis, the OLS assumes that the effective amount of increase, after application of the cap, would be 10 percent of the average worker's wages, a proportional increase of 18 percent ($.10/.55 = .18$). This 18 percent average increase would produce a total cost increase for all employers of approximately \$2 million, or 0.2 percent of all workers' compensation benefits. With respect to the costs to the State as an employer, this 0.2 percent increase applied to the \$40 million in workers' compensation for State employees appropriated in the current budget would increase State costs approximately \$80,000 per year.

The provisions of section 2 of the bill, which apply only to claims for occupational disease caused by asbestos, do not increase the amount of benefits to be paid, but reassign liability for payment of certain of these claims, as to which responsibility is uncertain or the responsible party cannot be located, to the uninsured employer's fund. Any portion of this liability which is not met through exercise of the

right of subrogation will effectively be funded from the Second Injury Fund, which is supported exclusively by assessments imposed on employers and insurers. This increase in cost to the Second Injury Fund would have no fiscal impact on the State because the State is exempt from making payments to the fund.