

SENATE, No. 1967

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 22, 2018

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Cumberland, Gloucester and Salem)

Senator FRED H. MADDEN, JR.

District 4 (Camden and Gloucester)

SYNOPSIS

Concerns certain workers' compensation supplemental benefits.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/11/2018)

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 2020, commencing July 1,
8 2019, 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 2019 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 2020; 66 2/3% of the base
39 amount during fiscal year 2021; and 100% of the base amount
40 during fiscal year 2022 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 Insurance Act,
45 the 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
48 U.S.C. 424a of the amount of disability benefits for which the

1 individual is eligible under the Federal Old Age, Survivors and
2 Disability Insurance Act;

3 (2) The actual amount of the supplemental benefits paid
4 pursuant to this section to any individual shall, in cases not subject
5 to the provisions of paragraph (1) of this subsection, be reduced by
6 an amount equal to the individual's benefit payable under the
7 Federal Old-Age, Survivors' and Disability Insurance Act (except
8 for disability benefits paid to that individual under that act and any
9 cost of living increases in benefits paid to that individual under that
10 act), Black Lung benefits, or the employer's share of disability
11 pension payments received from or on account of an employer;

12 (3) A supplemental benefit shall not be paid if the actual amount
13 of the benefit to be paid is calculated to be less than \$5 per week,
14 and

15 (4) A supplemental benefit shall not be paid to an individual
16 who elects to not receive benefits under the Federal Old Age,
17 Survivors and Disability Insurance Act for which the individual is
18 eligible.

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

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

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37 2. This act shall take effect immediately.

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STATEMENT

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42 This bill provides, from July 1, 2019 forward, an annual cost of
43 living adjustment (COLA) in the weekly workers' compensation
44 benefit rate for any worker who has become totally and permanently
45 disabled from a workplace injury at any time after December 31,
46 1979 and for the surviving dependents of any worker who died from
47 a workplace injury after December 31, 1979. This adjustment is

1 intended to mirror, to the extent possible, the COLA already in
2 place for benefits arising from an injury occurring before 1980.

3 The bill provides for the COLA to be an amount such that, when
4 added to the workers' compensation weekly benefit rate initially
5 awarded, the sum will bear the same percentage relationship to the
6 maximum benefit rate at the time of the adjustment that the initial
7 rate bore to the maximum rate at the time of the initial award,
8 except that:

9 (1) the bill reduces the amount of the adjustment as much as
10 necessary to ensure that the sum of the adjustment and the amount
11 initially awarded does not exceed the amount which would cause
12 any reduction of Social Security disability benefits;

13 (2) in cases which are not subject to the provisions of point one
14 above, the bill reduces the supplemental workers' compensation
15 benefits (but not regular workers' compensation) for claimants
16 injured after 1979 by the amount of any Social Security benefits
17 (other than Social Security disability benefits and any cost of living
18 increases in Social Security benefits), Black Lung benefits, or the
19 employer's share of disability pension payments received from or
20 on account of an employer; and

21 (3) the bill requires that the COLA benefits will not be paid to
22 any individual who elects to not receive benefits under the Federal
23 Old Age, Survivors and Disability Insurance Act for which the
24 individual is eligible.

25 These reductions parallel the reductions provided under current
26 law for claimants who were injured before 1980. The bill also
27 provides that no supplemental benefits will be paid in any case in
28 which they are calculated to be less than \$5 per week.

29 Current law requires such annual adjustments in the rate of
30 workers' compensation benefits for death and permanent total
31 disability to be paid from the Second Injury Fund (SIF), but only
32 for cases of injury or death occurring before January 1, 1980. The
33 bill extends the adjustments paid from the SIF to claims originating
34 after December 31, 1979, although the adjustments apply only to
35 benefits paid on those claims after July 1, 2017 to avoid a backlog
36 of retroactive benefits.

37 The bill provides that COLA benefits will commence six months
38 after the increased SIF assessment to ensure the SIF has sufficient
39 funds to pay the benefits without using General Fund money. The
40 supplemental benefit payments will start on July 1, 2019 and the
41 Department of Labor and Workforce Development is required to
42 take into account the supplemental benefits when calculating the
43 amount of the SIF assessment which starts on January 1, 2019 to
44 avoid the need for any General Fund appropriation.

45 To avoid an abrupt fiscal impact on the workers' compensation
46 system, the bill provides that one third of the supplemental benefit
47 rate be paid during the first year (fiscal year 2020), two thirds of the
48 rate be paid during the second year (fiscal year 2021), and the full

1 amount be paid during the third year (fiscal year 2022) and
2 subsequent years thereafter.

3 The cost of living supplement that the bill provides to an
4 individual for total permanent disability or survivor's benefits under
5 workers' compensation will be reduced by the original amount of
6 that individual's periodic Social Security survivor's or retirement
7 benefits, but not reduced by subsequent cost of living increases in
8 those Social Security benefits. In the case of an individual who
9 initially received Social Security disability benefits and later
10 receives Social Security retirement benefits, or who dies and has
11 dependents who receive Social Security survivors' benefits, the
12 workers' compensation supplement will then be reduced by the
13 amount of the Social Security retirement or survivor benefits,
14 exclusive of any cost of living increase in those Social Security
15 retirement or survivor benefits.

16 The bill sets time limits for workers' compensation insurers and
17 self-insured employers to notify the SIF when supplemental
18 workers' compensation benefits are required under the bill. An
19 insurer or self-insured employer is required to provide the notice
20 not more than 60 days after the supplement is awarded or voluntary
21 payment is to begin. If a failure to notify results in the payment of
22 an incorrect amount of benefits, the liability for the payment of the
23 supplemental benefits is transferred from the SIF to the insurer or
24 employer until the required notice is provided.

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