

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1967

STATE OF NEW JERSEY

DATED: SEPTEMBER 13, 2018

The Senate Labor Committee reports favorably Senate Bill, No. 1967.

This bill provides, from July 1, 2019 forward, an annual cost of living adjustment (COLA) in the weekly workers' compensation benefit rate for any worker who has become totally and permanently disabled from a workplace injury at any time after December 31, 1979 and for the surviving dependents of any worker who died from a workplace injury after December 31, 1979. This adjustment is intended to mirror, to the extent possible, the COLA already in place for benefits arising from an injury occurring before 1980.

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

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

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

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

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

Current law requires such annual adjustments in the rate of workers' compensation benefits for death and permanent total disability to be paid from the Second Injury Fund (SIF), but only for cases of injury or death occurring before January 1, 1980. The bill

extends the adjustments paid from the SIF to claims originating after December 31, 1979, although the adjustments apply only to benefits paid on those claims after July 1, 2017 to avoid a backlog of retroactive benefits.

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

To avoid an abrupt fiscal impact on the workers' compensation system, the bill provides that one third of the supplemental benefit rate be paid during the first year (fiscal year 2020), two thirds of the rate be paid during the second year (fiscal year 2021), and the full amount be paid during the third year (fiscal year 2022) and subsequent years thereafter.

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

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

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