

ASSEMBLY, No. 4559

STATE OF NEW JERSEY
221st LEGISLATURE

INTRODUCED JUNE 13, 2024

Sponsored by:

Assemblywoman DAWN FANTASIA

District 24 (Morris, Sussex and Warren)

Co-Sponsored by:

Assemblyman Inganamort

SYNOPSIS

Concerns certain workers' compensation supplemental benefits and funding method.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning workers' compensation and supplementing
2 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 on July 1, 2025, and in each fiscal year
8 thereafter, a person who is an employee, or a dependent of the
9 employee, who is receiving weekly benefits pursuant to subsection
10 b. of R.S.34:15-12, R.S.34:15-13, or R.S.34:15-95 for a disability or
11 death that occurred after December 31, 1979, and who is not
12 entitled to receive special adjustment benefits pursuant to section 1
13 of P.L.1980, c.83 (C.34:15-95.4), or the supplemental benefits
14 pursuant to section 1 of P.L.2019, c.127 (C.34:15-95.6) or section 1
15 of P.L.2021, c.55 (C.34:15-95.8), shall be entitled to receive weekly
16 supplemental benefits from the Second Injury Fund during the
17 period in which the person is eligible to receive the initially-
18 awarded weekly benefits, whenever the amount of the initially-
19 awarded weekly benefits is less than the total amount of weekly
20 benefits that would be payable to the persons if that total amount
21 included weekly supplemental benefits calculated in the manner
22 indicated in subsection b. of this section. In making the
23 determination of the aggregate annual surcharge for the Second
24 Injury Fund to be levied pursuant to paragraph (4) of subsection c.
25 of R.S.34:15-94 for calendar year 2025 and each subsequent
26 calendar year, the Commissioner of Labor and Workforce
27 Development shall exclude the anticipated additional amounts
28 required for payment of supplemental benefits pursuant to this
29 section during the fiscal year which begins on July 1 of the
30 respective calendar year. The amounts required to fund the weekly
31 supplemental benefits that are excluded from the calculation of
32 employer assessments shall be sourced from the General Fund.

33 b. The base amount of the weekly supplemental benefits to be
34 paid pursuant to this section during each fiscal year shall be
35 calculated in a manner so that when it is added to the workers'
36 compensation weekly benefits initially awarded, the sum of the
37 initial award and the base weekly supplemental benefits shall bear
38 the same percentage relationship to the maximum workers'
39 compensation benefit rate for the current fiscal year that the
40 person's initial weekly benefits bore to the maximum workers'
41 compensation benefit rate in effect at the time of the injury or death.
42 The actual amount of the supplemental benefits paid pursuant to
43 this section shall be 33 1/3% of the base amount during fiscal year
44 2026; 66 2/3% of the base amount during fiscal year 2027; and
45 100% of the base amount during fiscal year 2028 and thereafter,
46 except that:

47 (1) The actual amount of the supplemental benefits paid
48 pursuant to this section to any person shall be reduced if necessary,
49 and as much as is needed, to ensure that the sum of disability

1 benefits provided under the Federal Old Age, Survivors and
2 Disability Insurance Act, the weekly supplemental benefits and the
3 workers' compensation initially awarded does not, with respect to
4 any particular case, exceed the amount which would cause any
5 reduction pursuant to 42 U.S.C. 424a of the amount of disability
6 benefits for which the individual is eligible under the Federal Old
7 Age, Survivors and Disability Insurance Act;

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

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

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

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

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

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42 2. This act shall take effect immediately.

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STATEMENT

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47 This bill provides, from July 1, 2025 forward, an annual cost of
48 living adjustment (COLA) in the weekly workers' compensation
49 benefit rate for any worker who has become totally and permanently

1 disabled from a workplace injury at any time after December 31,
2 1979 and for the surviving dependents of any worker who died from
3 a workplace injury after December 31, 1979, except the COLA
4 provided in this bill does not apply public safety workers and their
5 dependents who already receive a COLA pursuant to P.L.2019,
6 c.127, or to dependents of essential employees who died from
7 COVID, who receive a COLA pursuant to P.L.2021, c.55. This
8 adjustment is intended to mirror, to the extent possible, the COLA
9 already in place for benefits arising from an injury occurring before
10 1980.

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

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

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

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

33 (4) the bill requires that the COLA increase portion of the
34 benefit increase is funded out of the General Fund.

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

39 Current law requires such annual adjustments in the rate of
40 workers' compensation benefits for death and permanent total
41 disability to be paid from the Second Injury Fund (SIF), but only
42 for cases of injury or death occurring before January 1, 1980. The
43 bill extends the adjustments paid from the SIF to claims originating
44 after December 31, 1979, although the adjustments apply only to
45 benefits paid on those claims after July 1, 2025 to avoid a backlog
46 of retroactive benefits.

47 To avoid an abrupt fiscal impact on the workers' compensation
48 system, the bill provides that one third of the supplemental benefit
49 rate be paid during the first year (fiscal year 2026), two thirds of the

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1 rate be paid during the second year (fiscal year 2027), and the full
2 amount be paid during the third year (fiscal year 2028) and
3 subsequent years.

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

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

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