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No

P.L. 2003, CHAPTER 253, *approved January 14, 2004*
Senate, No. 1522 (*Second Reprint*)

1 AN ACT concerning workers' compensation for ¹certain¹ occupational
2 disease claims and workers' compensation benefit rates for
3 surviving dependents ¹[and]¹ amending R.S.34:15-13,
4 ¹[R.S.34:15-30 and R.S.34:15-32] supplementing Title 34 of the
5 Revised Statutes¹ and repealing R.S.34:15-33.
6

7 **BE IT ENACTED** by the Senate and General Assembly of the State
8 of New Jersey:

9
10 1. R.S.34:15-13 is amended to read as follows:

11 34:15-13. Except as hereinafter provided, in case of death,
12 compensation shall be computed, but not distributed, on the following
13 basis:

14 a. For one [dependent, 50%] or more dependents, 70% of wages.

15 b. [For two dependents, 55% of wages] (Deleted by amendment,
16 P.L. _____, c. _____).

17 c. [For three dependents, 60% of wages] (Deleted by amendment,
18 P.L. _____, c. _____).

19 d. [For four dependents, 65% of wages] (Deleted by amendment,
20 P.L. _____, c. _____).

21 e. [For five or more dependents, 70% of wages] (Deleted by
22 amendment, P.L. _____, c. _____).

23 f. The term "dependents" shall apply to and include any or all of
24 the following who are dependent upon the deceased at the time of
25 accident or the occurrence of occupational disease, or at the time of
26 death, namely: husband, wife, parent, stepparents, grandparents,
27 children, stepchildren, grandchildren, child in esse, posthumous child,
28 illegitimate children, brothers, sisters, half brothers, half sisters, niece,
29 nephew. Legally adopted children shall, in every particular, be
30 considered as natural children. Dependency shall be conclusively
31 presumed as to the decedent's spouse and to any natural child of a
32 decedent under 18 years of age or, if enrolled as a full-time student,
33 under 23 years of age, who was actually a part of the decedent's
34 household at the time of the decedent's death. Every provision of this
35 article applying to one class shall be equally applicable to the other.
36 Should any dependent of a deceased employee die during the period
37 covered by such weekly payments the right of such dependent to
38 compensation under this section shall cease, but should the surviving

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLA committee amendments adopted January 27, 2003.

² Senate SBA committee amendments adopted March 17, 2003.

1 spouse of a deceased employee remarry during such period and before
2 the total compensation is paid, the spouse shall be entitled to receive
3 the remainder of the compensation which would have been due the
4 spouse had the spouse not remarried, or 100 times the amount of
5 weekly compensation paid immediately preceding the remarriage,
6 whichever is the lesser. The foregoing schedule applies only to
7 persons wholly dependent, and in the case of persons only partially
8 dependent, except in the case of the surviving spouse and children who
9 were actually a part of the decedent's household at the time of death,
10 the compensation shall be such proportion of the scheduled percentage
11 as the amounts actually contributed to them by the deceased for their
12 support constituted of his total wages and the provision as to a
13 minimum of 20% of the average weekly wage as set forth in subsection
14 a. of R.S.34:15-12 shall not apply to such compensation. In
15 determining the number of dependents, where the deceased employee
16 was a minor, the number of persons dependent upon the deceased
17 employee shall be determined in the same way as if the deceased
18 employee were an adult, notwithstanding any rule of law as to the
19 person entitled to a minor's wages.

20 g. Compensation shall be computed upon the foregoing basis.
21 Distribution shall be made among dependents, if more than one,
22 according to the order of the Division of Workers' Compensation,
23 which shall, when applied to for that purpose, determine, upon the
24 facts being presented to it, the proportion to be paid to or on behalf of
25 each dependent according to the relative-dependency. Payment on
26 behalf of infants shall be made to the surviving parent, if any, or to the
27 statutory or testamentary guardian.

28 h. If death results from the accident or occupational disease,
29 whether there be dependents or not, expenses of the last sickness of
30 the deceased employee shall be paid in accordance with the provisions
31 for medical and hospital service as set forth in R.S.34:15-15. In
32 addition, the cost of burial and of a funeral, not to exceed \$3,500 shall
33 be paid to the dependent or other person having paid the costs of
34 burial and the funeral. In the event that the dependent or other person
35 has paid less than \$3,500 for the costs of burial and the funeral, the
36 dependent or other person shall be reimbursed in the amount paid and,
37 if the costs of burial and the funeral exceed the amount so paid, the
38 difference between the said amount and \$3,500 or so much thereof as
39 may be necessary to pay the cost of burial and the funeral, shall be
40 paid to the undertaker or embalmer or the dependent or other person
41 having paid the costs of burial and the funeral. In the event that no
42 part of the costs of burial and the funeral have been paid, the amount
43 of such cost of burial and the funeral, not to exceed \$3,500, shall be
44 paid to the undertaker or embalmer or the dependent or other person
45 who is to pay the costs of burial and the funeral.

46 i. In computing compensation to those named in this section,

1 except husband, wife, parents and stepparents, and except as otherwise
2 provided in this section, only those under 18 or over 40 years of age
3 shall be included and then only for that period in which they are under
4 18 or over 40; provided, however, that payments to such physically or
5 mentally deficient persons as are for such reason dependent shall be
6 made during the full compensation period of 450 weeks.

7 j. The maximum compensation in case of death shall be subject to
8 the maximum compensation as stated in subsection a. of R.S.34:15-12
9 and a minimum of 20% of average weekly wages per week as set forth
10 in subsection a. of R.S.34:15-12, except in the case of partial
11 dependency as provided in this section. This compensation shall be
12 paid, in the case of a surviving spouse, during the entire period of
13 survivorship or until such surviving spouse shall remarry and, in the
14 case of other dependents, during 450 weeks and if at the expiration of
15 450 weeks there shall be one or more dependents under 18 years of
16 age, compensation shall be continued for such dependents until they
17 reach 18 years of age, or 23 years of age while enrolled as a full-time
18 student, at the schedule provided under [subsections] subsection a.
19 [to e.] of this section.

20 (cf: P.L.1995, c.185, s.1)

21

22 ¹[2. R.S.34:15-30 is amended to read as follows:

23 34:15-30. When employer and employee have accepted the
24 provisions of this article as aforesaid, compensation for personal
25 injuries to or for death of [such] the employee by any compensable
26 occupational disease arising out of and in the course of his
27 employment, as hereinafter defined, shall be made by the employer to
28 the extent hereinafter set forth and without regard to the negligence of
29 the employer, except that no compensation shall be payable when the
30 injury or death by occupational disease is caused by willful
31 self-exposure to a known hazard or by the employee's willful failure to
32 make use of a reasonable and proper guard or personal protective
33 device furnished by the employer which has been clearly made a
34 requirement of the employee's employment by the employer and which
35 an employer can properly document that despite repeated warnings,
36 the employee has willfully failed to properly and effectively utilize,
37 provided, however, this latter provision shall not apply where there is
38 such imminent danger or need for immediate action which does not
39 allow for appropriate use of personal protective device or devices.
40 The employee or the surviving dependents of the employee may obtain
41 full compensation for injury or death by a compensable occupational
42 disease from any employer or employers, if the employee was, in the
43 course of employment with that employer or those employers, exposed
44 to a deleterious substance which is a cause of the occupational disease,
45 and it shall not be a defense to the claim that an employer was not the
46 last employer or that the latency period for the exposure is not

1 adequate.

2 (cf: P.L.1979, c.283, s.9)]¹

3

4 ¹2. (New section) a. In the case of a claim for compensation for
5 an occupational disease resulting in injury or death from an exposure
6 to asbestos, if after due diligence, the standards for which shall be set
7 forth by the Director of the Division of Workers' Compensation: (1)
8 the workers compensation insurer of an employer, the employer, or the
9 principals of the employer where the claimant was last exposed cannot
10 be located; or (2) the employee making the claim worked for more
11 than one employer, during which time the exposure to asbestos may
12 reasonably be deemed to have taken place but the employer or
13 employers where the petitioner was last exposed cannot reasonably be
14 identified, an application shall be made to the ²[Second Injury Fund]
15 uninsured employer's fund², created pursuant to ²[R.S. 34:15-95]
16 section 10 of P.L.1966, c.126 (C.34:15-120.1)², and any award by a
17 judge of compensation shall be payable from the fund. For the
18 purposes of this section "occupational disease resulting in injury or
19 death from an exposure to asbestos" means asbestosis or any asbestos-
20 induced cancer, including mesothelioma.

21 b. In the case of any claim paid by the ²[Second Injury Fund]
22 uninsured employer's fund² pursuant to this section, the fund shall
23 have the right of subrogation against (1) any insurer or employer
24 identified as liable as set forth under the provisions of subsection a. of
25 this section; or (2) against the stock workers' compensation security
26 fund, or the mutual workers' compensation security fund, if an
27 insolvent insurer is determined to be liable ²; or (3) against the New
28 Jersey Self-Insurers Guaranty Association if an insolvent self-insurer
29 is determined to be liable².

30 c. The fund shall have a lien pursuant to R.S.34:15-40 against any
31 award received by the claimant from a third party resulting from the
32 exposure to asbestos.

33 d. Compensation shall be based on the last date of exposure, if
34 known, or if the last date of exposure cannot be known, the judge shall
35 establish an appropriate date.¹

36 ²e. To ensure sufficient funding for the payment of claims under
37 this section, the State Treasurer shall, within 30 days following the
38 effective date of P.L. _____, c. _____ (C. _____) (now pending before the
39 Legislature as this bill) and upon request of the Commissioner of
40 Labor, transfer an amount not to exceed \$500,000 from the Second
41 Injury Fund to the uninsured employer's fund. At the end of the first
42 calendar quarter immediately following that effective date and at the
43 end of each calendar quarter thereafter, the State Treasurer shall, upon
44 request of the Commissioner of Labor, transfer from the Second Injury
45 Fund to the uninsured employer's fund an amount estimated by the
46 Commissioner of Labor to be required by the uninsured employer's

1 fund for payment of such claims for the next following calendar
2 quarter. Amounts transferred from the Second Injury Fund under the
3 provisions of this subsection shall be included in the determination of
4 surcharges and assessments for the Second Injury Fund and shall be
5 excluded from the determination of surcharges and assessments for the
6 uninsured employer's fund.

7 f. The Commissioner of Labor shall, within 180 days following the
8 effective date of P.L. _____, c. _____ (C. _____) (now pending before the
9 Legislature as this bill), promulgate rules and regulations as necessary
10 to effectuate the purposes of that act.²

11
12 ¹[3. R.S.34:15-32 is amended to read as follows:

13 34:15-32. The compensation payable for death or disability total
14 in character and permanent in quality resulting from an occupational
15 disease shall be the same in amount and duration and shall be payable
16 in the same manner and to the same persons as would have been
17 entitled thereto had the death or disability been caused by an accident
18 arising out of and in the course of the employment, except that for any
19 employee or dependent who is not entitled to receive special
20 adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-
21 95.4):

22 a. In the case of disability total in character and permanent in
23 quality which manifests itself after the last date of exposure with the
24 liable employer, the weekly benefit amount shall be calculated as if the
25 employee had continued working until the date of manifestation, and
26 be based on the amount that the employee's weekly wage would have
27 been at the time of manifestation, which shall be determined by
28 increasing the employee's weekly wages received prior to the last date
29 of exposure with the liable employer by the percentage increase in the
30 average weekly wage for all workers covered by the "unemployment
31 compensation law" (R.S.43:21-1 et seq.) from that last date of
32 exposure to the date of manifestation.

33 b. In the case of death from occupational disease which occurs
34 after the last date of exposure with the liable employer, the weekly
35 benefit amount shall be calculated as if the employee had continued
36 working until the date of death, and be based on the amount that the
37 employee's weekly wage would have been at the time of death, which
38 shall be determined by increasing the employee's weekly wages
39 received prior to the last date of exposure with the liable employer by
40 the percentage increase in the average weekly wage for all workers
41 covered by the "unemployment compensation law" (R.S.43:21-1 et
42 seq.) from that last date of exposure to the date of death.

43 In determining the duration of temporary and permanent partial
44 disability, either or both, and the duration of payment for the disability
45 due to occupational diseases, the same rules and regulations as are
46 now applicable to accident or injury occurring under this article shall

1 apply, except that in the case of an occupational disease which
2 manifests itself after the last date of exposure with the liable employer,
3 the weekly benefit amount shall be calculated as if the employee had
4 continued working until the date of manifestation, and be based on the
5 amount that the employee's weekly wage would have been at the time
6 of manifestation, which shall be determined by increasing the
7 employee's weekly wages received prior to the last date of exposure
8 with the liable employer by the percentage increase in the average
9 weekly wage for all workers covered by the "unemployment
10 compensation law" (R.S.43:21-1 et seq.) from that last date of
11 exposure to the date of manifestation.]¹

12

13 ¹[4.] 3.¹ R.S.34:15-33 is repealed.

14

15 ¹[5.] 4.¹ This act shall take effect immediately.

16

17

18

19

20 Concerns workers' compensation for occupational disease claims and
21 workers' compensation benefit rates for surviving dependents.

SENATE, No. 1522

STATE OF NEW JERSEY
210th LEGISLATURE

INTRODUCED MAY 16, 2002

Sponsored by:
Senator RICHARD J. CODEY
District 27 (Essex)

SYNOPSIS

Concerns workers' compensation for occupational disease claims and workers' compensation benefit rates for surviving dependents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2002)

S1522 CODEY

2

1 AN ACT concerning workers' compensation for occupational disease
2 claims and workers' compensation benefit rates for surviving
3 dependents and amending R.S.34:15-13, R.S.34:15-30 and
4 R.S.34:15-32 and repealing R.S.34:15-33.

5

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

8

9 1. R.S.34:15-13 is amended to read as follows:

10 34:15-13. Except as hereinafter provided, in case of death,
11 compensation shall be computed, but not distributed, on the following
12 basis:

13 a. For one **[dependent, 50%]** or more dependents, 70% of wages.

14 b. **[For two dependents, 55% of wages]** (Deleted by amendment,
15 P.L. , c.).

16 c. **[For three dependents, 60% of wages]** (Deleted by amendment,
17 P.L. , c.).

18 d. **[For four dependents, 65% of wages]** (Deleted by amendment,
19 P.L. , c.).

20 e. **[For five or more dependents, 70% of wages]** (Deleted by
21 amendment, P.L. , c.).

22 f. The term "dependents" shall apply to and include any or all of
23 the following who are dependent upon the deceased at the time of
24 accident or the occurrence of occupational disease, or at the time of
25 death, namely: husband, wife, parent, stepparents, grandparents,
26 children, stepchildren, grandchildren, child in esse, posthumous child,
27 illegitimate children, brothers, sisters, half brothers, half sisters, niece,
28 nephew. Legally adopted children shall, in every particular, be
29 considered as natural children. Dependency shall be conclusively
30 presumed as to the decedent's spouse and to any natural child of a
31 decedent under 18 years of age or, if enrolled as a full-time student,
32 under 23 years of age, who was actually a part of the decedent's
33 household at the time of the decedent's death. Every provision of this
34 article applying to one class shall be equally applicable to the other.
35 Should any dependent of a deceased employee die during the period
36 covered by such weekly payments the right of such dependent to
37 compensation under this section shall cease, but should the surviving
38 spouse of a deceased employee remarry during such period and before
39 the total compensation is paid, the spouse shall be entitled to receive
40 the remainder of the compensation which would have been due the
41 spouse had the spouse not remarried, or 100 times the amount of
42 weekly compensation paid immediately preceding the remarriage,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

S1522 CODEY

1 whichever is the lesser. The foregoing schedule applies only to
2 persons wholly dependent, and in the case of persons only partially
3 dependent, except in the case of the surviving spouse and children who
4 were actually a part of the decedent's household at the time of death,
5 the compensation shall be such proportion of the scheduled percentage
6 as the amounts actually contributed to them by the deceased for their
7 support constituted of his total wages and the provision as to a
8 minimum of 20% of the average weekly wage as set forth in subsection
9 a. of R.S.34:15-12 shall not apply to such compensation. In
10 determining the number of dependents, where the deceased employee
11 was a minor, the number of persons dependent upon the deceased
12 employee shall be determined in the same way as if the deceased
13 employee were an adult, notwithstanding any rule of law as to the
14 person entitled to a minor's wages.

15 g. Compensation shall be computed upon the foregoing basis.
16 Distribution shall be made among dependents, if more than one,
17 according to the order of the Division of Workers' Compensation,
18 which shall, when applied to for that purpose, determine, upon the
19 facts being presented to it, the proportion to be paid to or on behalf of
20 each dependent according to the relative-dependency. Payment on
21 behalf of infants shall be made to the surviving parent, if any, or to the
22 statutory or testamentary guardian.

23 h. If death results from the accident or occupational disease,
24 whether there be dependents or not, expenses of the last sickness of
25 the deceased employee shall be paid in accordance with the provisions
26 for medical and hospital service as set forth in R.S.34:15-15. In
27 addition, the cost of burial and of a funeral, not to exceed \$3,500 shall
28 be paid to the dependent or other person having paid the costs of
29 burial and the funeral. In the event that the dependent or other person
30 has paid less than \$3,500 for the costs of burial and the funeral, the
31 dependent or other person shall be reimbursed in the amount paid and,
32 if the costs of burial and the funeral exceed the amount so paid, the
33 difference between the said amount and \$3,500 or so much thereof as
34 may be necessary to pay the cost of burial and the funeral, shall be
35 paid to the undertaker or embalmer or the dependent or other person
36 having paid the costs of burial and the funeral. In the event that no
37 part of the costs of burial and the funeral have been paid, the amount
38 of such cost of burial and the funeral, not to exceed \$3,500, shall be
39 paid to the undertaker or embalmer or the dependent or other person
40 who is to pay the costs of burial and the funeral.

41 i. In computing compensation to those named in this section,
42 except husband, wife, parents and stepparents, and except as otherwise
43 provided in this section, only those under 18 or over 40 years of age
44 shall be included and then only for that period in which they are under
45 18 or over 40; provided, however, that payments to such physically or
46 mentally deficient persons as are for such reason dependent shall be

S1522 CODEY

4

1 made during the full compensation period of 450 weeks.

2 j. The maximum compensation in case of death shall be subject to
3 the maximum compensation as stated in subsection a. of R.S.34:15-12
4 and a minimum of 20% of average weekly wages per week as set forth
5 in subsection a. of R.S.34:15-12, except in the case of partial
6 dependency as provided in this section. This compensation shall be
7 paid, in the case of a surviving spouse, during the entire period of
8 survivorship or until such surviving spouse shall remarry and, in the
9 case of other dependents, during 450 weeks and if at the expiration of
10 450 weeks there shall be one or more dependents under 18 years of
11 age, compensation shall be continued for such dependents until they
12 reach 18 years of age, or 23 years of age while enrolled as a full-time
13 student, at the schedule provided under [subsections] subsection a.
14 [to e.] of this section.

15 (cf: P.L.1995, c.185, s.1)

16

17 2. R.S.34:15-30 is amended to read as follows:

18 34:15-30. When employer and employee have accepted the
19 provisions of this article as aforesaid, compensation for personal
20 injuries to or for death of [such] the employee by any compensable
21 occupational disease arising out of and in the course of his
22 employment, as hereinafter defined, shall be made by the employer to
23 the extent hereinafter set forth and without regard to the negligence of
24 the employer, except that no compensation shall be payable when the
25 injury or death by occupational disease is caused by willful
26 self-exposure to a known hazard or by the employee's willful failure to
27 make use of a reasonable and proper guard or personal protective
28 device furnished by the employer which has been clearly made a
29 requirement of the employee's employment by the employer and which
30 an employer can properly document that despite repeated warnings,
31 the employee has willfully failed to properly and effectively utilize,
32 provided, however, this latter provision shall not apply where there is
33 such imminent danger or need for immediate action which does not
34 allow for appropriate use of personal protective device or devices.
35 The employee or the surviving dependents of the employee may obtain
36 full compensation for injury or death by a compensable occupational
37 disease from any employer or employers, if the employee was, in the
38 course of employment with that employer or those employers, exposed
39 to a deleterious substance which is a cause of the occupational disease,
40 and it shall not be a defense to the claim that an employer was not the
41 last employer or that the latency period for the exposure is not
42 adequate.

43 (cf: P.L.1979, c.283, s.9)

44

45 3. R.S.34:15-32 is amended to read as follows:

46 34:15-32. The compensation payable for death or disability total

1 in character and permanent in quality resulting from an occupational
2 disease shall be the same in amount and duration and shall be payable
3 in the same manner and to the same persons as would have been
4 entitled thereto had the death or disability been caused by an accident
5 arising out of and in the course of the employment, except that for any
6 employee or dependent who is not entitled to receive special
7 adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-
8 95.4):

9 a. In the case of disability total in character and permanent in
10 quality which manifests itself after the last date of exposure with the
11 liable employer, the weekly benefit amount shall be calculated as if the
12 employee had continued working until the date of manifestation, and
13 be based on the amount that the employee's weekly wage would have
14 been at the time of manifestation, which shall be determined by
15 increasing the employee's weekly wages received prior to the last date
16 of exposure with the liable employer by the percentage increase in the
17 average weekly wage for all workers covered by the "unemployment
18 compensation law" (R.S.43:21-1 et seq.) from that last date of
19 exposure to the date of manifestation.

20 b. In the case of death from occupational disease which occurs
21 after the last date of exposure with the liable employer, the weekly
22 benefit amount shall be calculated as if the employee had continued
23 working until the date of death, and be based on the amount that the
24 employee's weekly wage would have been at the time of death, which
25 shall be determined by increasing the employee's weekly wages
26 received prior to the last date of exposure with the liable employer by
27 the percentage increase in the average weekly wage for all workers
28 covered by the "unemployment compensation law" (R.S.43:21-1 et
29 seq.) from that last date of exposure to the date of death.

30 In determining the duration of temporary and permanent partial
31 disability, either or both, and the duration of payment for the disability
32 due to occupational diseases, the same rules and regulations as are
33 now applicable to accident or injury occurring under this article shall
34 apply, except that in the case of an occupational disease which
35 manifests itself after the last date of exposure with the liable employer,
36 the weekly benefit amount shall be calculated as if the employee had
37 continued working until the date of manifestation, and be based on the
38 amount that the employee's weekly wage would have been at the time
39 of manifestation, which shall be determined by increasing the
40 employee's weekly wages received prior to the last date of exposure
41 with the liable employer by the percentage increase in the average
42 weekly wage for all workers covered by the "unemployment
43 compensation law" (R.S.43:21-1 et seq.) from that last date of
44 exposure to the date of manifestation.

1 4. R.S.34:15-33 is repealed.

2

3 5. This act shall take effect immediately.

4

5

6

STATEMENT

7

8 This bill permits a worker or the surviving dependents of the
9 worker to obtain workers' compensation from any employer or
10 employers, if the worker was, in the course of employment with that
11 employer or those employers, exposed to a deleterious substance
12 which is a cause of the occupational disease, without regard to the
13 latency period for the exposure or whether the employer was the last
14 employer of the worker. The current practice of limiting responsibility
15 to the last employer, when combined with the long latency periods of
16 some occupational diseases, often prevents the recovery of any
17 compensation.

18 The bill also changes the procedures for calculating the weekly
19 benefit amount in an occupational disease claim in which the disease
20 manifests itself or causes death after the last date of exposure with the
21 liable employer. Current law calculates benefit rates on the basis of
22 the worker's weekly wage at the time of last exposure with a liable
23 employer. The bill instead requires that benefit rates be calculated as
24 if the worker had worked until the time of manifestation, or of death,
25 in the case of benefits for surviving dependents, and be based on the
26 amount that the worker's weekly wage would have been at the time of
27 manifestation or death. The bill makes an exception for cases of death
28 or permanent total disability occurring prior to January 1, 1980,
29 because current law already provides for a cost of living adjustment in
30 those cases.

31 In addition, the bill repeals R.S.34:15-33, which currently requires
32 the worker or the worker's dependents to notify the employer within
33 five months after an exposure to an occupational disease ends, or 90
34 days after the worker knew, or should have known, about the disease
35 and its relation to the employment, whichever is later. Any claimant
36 for compensation would still be subject to the requirements if
37 R.S.34:15-34 that a claim for compensation for occupational disease
38 be filed within two years after the date when the claimant first knew
39 the nature of the disability and its relation to the employment.

40 Finally, the bill increases the benefit rate surviving dependents of a
41 worker who dies because of occupational illness or injury to 70% of
42 the worker's weekly wage without regard to the number of
43 dependents.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]
SENATE, No. 1522

STATE OF NEW JERSEY

DATED: JANUARY 8, 2004

The Assembly Appropriations Committee reports favorably Senate Bill No.1522 (2R).

Senate Bill No.1522 (2R) 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 will 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 will 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 will 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.

As reported by the committee, this bill is identical to Assembly Bill No.1927 (1R) as amended and reported by the committee.

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.

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.

SENATE LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1522

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 27, 2003

The Senate Labor Committee reports favorably, and with amendments, Senate Bill No. 1522.

The bill amends R.S.34:15-13 to compute workers' compensation death benefits for surviving dependents based on 70% of the employee's wages, regardless of the number of dependents. Currently, compensation for death claims is set at 50% of the employee's wages for one surviving dependant, plus 5% for each additional dependant up to a maximum of 70%.

As amended, the bill provides that in the case of a claim for compensation for an occupational disease which resulted from exposure to asbestos, compensation shall be made from the Second Injury 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) if the employee making the claim worked for more than one employer, during which time 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. In such cases, an application shall be made to the Second Injury Fund and any award by a Judge of Compensation shall be payable from the fund.

The Second Injury Fund shall have the right of subrogation against any insurer or employer identified as liable or against the stock workers' compensation security fund or the mutual workers' compensation security fund. Compensation shall be based on the date of last exposure if known, or if not known, as determined by a workers' compensation judge.

The bill also repeals R.S.34:15-33, which currently requires the worker or the worker's dependents to notify the employer within five months after an exposure to an occupational disease ends, or 90 days after the worker knew, or should have known, about the disease and its relation to the employment, whichever is later. Any claimant for compensation would still be subject to the requirements if R.S.34:15-34 that a claim for compensation for occupational disease be filed within two years after the date when the claimant first knew the nature

of the disability and its relation to the employment.

The committee amended the bill to provide that claims for compensation for an occupational disease which results from exposure to asbestos shall be made from the Second Injury Fund in certain cases, as outlined above. The amendments deleted other provisions of the bill which changed the law with respect to the way in which certain occupational disease claims were calculated and paid.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 1522

STATE OF NEW JERSEY

210th LEGISLATURE

DATED: APRIL 11, 2003

SUMMARY

Synopsis: Concerns workers' compensation for occupational disease claims and workers' compensation benefit rates for surviving dependents.

Type of Impact: State costs related to workers' compensation claims

Agencies Affected: State Government as an employer

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Costs - Payment of Workers' Compensation Claims	\$80,000	\$80,000	\$80,000

- ! The Office of Legislative Services (OLS) estimates that Section 1 of the bill could potentially cost the State at least \$80,000 a year as an employer, based on reasonable projected scenarios.
- ! The provisions of section 2 of the bill, which relates to asbestos related occupational disease claims, may cost the State an indeterminate amount as an employer. However, charges to the Second Injury Fund would not effect the State because the State is exempt from paying into the fund.

BILL DESCRIPTION

Senate Bill No. 1522 (1R) of 2003 amends R.S. 34:15-13 to compute workers' compensation death benefits for surviving dependents based on 70 percent of the employee's wages, regardless of the number of dependents. Currently, compensation for death claims is set at 50 percent of the employee's wages for one surviving dependent, plus 5 percent for each additional dependent up to a maximum of 70 percent. The bill provides that in the case of a claim for compensation for an occupational disease which resulted from exposure to asbestos, compensation shall be made from the Second Injury 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 which time 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. In such cases, an application shall be made to the Second Injury Fund and any award by a judge of compensation shall be payable from the fund. The Second Injury Fund shall have the right of subrogation against any insurer or employer identified as liable or against the stock workers' compensation security fund or the mutual workers' compensation fund, if an insolvent insurer is determined to be liable. Compensation shall be based on the date of last exposure if known, as determined by a workers' compensation judge.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

Total workers' compensation cash benefits in death cases in the State have been not more than \$12 million for most of the last several years according to data made available from the Compensation Rating Insurance Bureau (CRIB). The Office of Legislative Services (OLS) determines that Section 1 of the bill will cost the State approximately \$80,000 a year. This is based on a reasonable projected scenario which assumes an average claim currently has two dependents (make the average current benefit amount equal 55 percent of the workers' wages) and the cap on all claims of 75 percent of the average weekly wage, currently \$630, for all workers will reduce the average claim under the bill from 70 percent to 65 percent, there would be a 10 percent increase in the average benefit as a portion of wages, of 18 percent increase over the previous amount paid. This would produce a total cost 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 total \$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, does not increase the amount of benefits to be paid in claims, but reapportions the liability to pay for any such claim among employers, insurers and the Second Injury Fund, which is supported exclusively by assessments imposed on employers and insurers. It is not possible to determine the net effect to the State as an employer because there is no data which details the amount of asbestos claims or their ultimate costs as it relates to the provisions in section 2 of the bill. However, charges to the Second Injury Fund would not impact the State because the State is exempt from making payments to the fund.

Section: *Commerce, Labor and Industry*

Analyst: *Sonya S. Hough*
Assistant Fiscal Analyst

Approved: *Alan R. Kooney*
Legislative Budget and Finance Officer

S1522 [1R]

3

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.

ASSEMBLY, No. 1927

STATE OF NEW JERSEY 210th LEGISLATURE

INTRODUCED FEBRUARY 21, 2002

Sponsored by:

Assemblyman JOSEPH V. EGAN

District 17 (Middlesex and Somerset)

Assemblyman JOSEPH R. MALONE, III

District 30 (Burlington, Mercer, Monmouth and Ocean)

Co-Sponsored by:

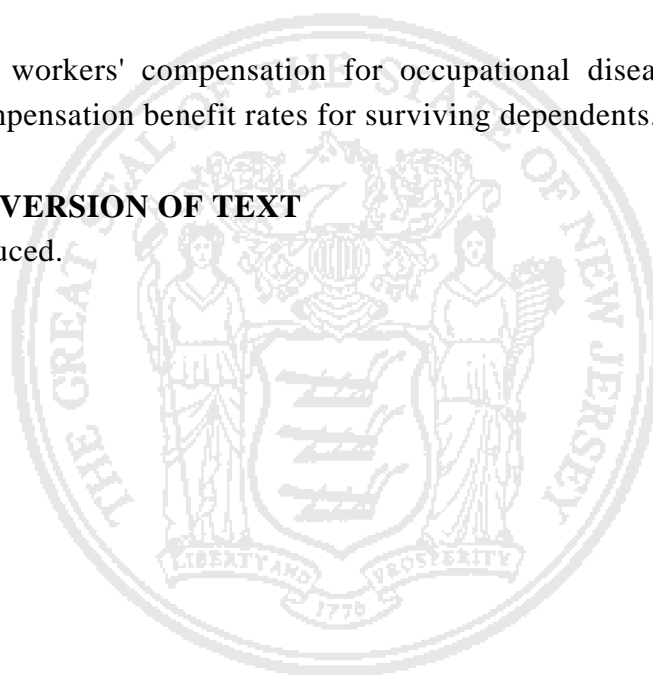
**Assemblymen Geist, Wisniewski, Doria, Ahearn, Diegnan,
Assemblywoman Friscia, Assemblymen Guear, Chivukula, Caraballo,
Green, Assemblywoman Greenstein, Assemblymen Eagler, Edwards,
Assemblywoman Weinberg, Assemblymen Burzichelli, Blee, D'Amato,
McKeon and Asselta**

SYNOPSIS

Concerns workers' compensation for occupational disease claims and workers' compensation benefit rates for surviving dependents.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 2/11/2003)

1 AN ACT concerning workers' compensation for occupational disease
2 claims and workers' compensation benefit rates for surviving
3 dependents and amending R.S.34:15-13, R.S.34:15-30 and
4 R.S.34:15-32 and repealing R.S.34:15-33.

5

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

8

9 1. R.S.34:15-13 is amended to read as follows:

10 34:15-13. Except as hereinafter provided, in case of death,
11 compensation shall be computed, but not distributed, on the following
12 basis:

13 a. For one **[dependent, 50%]** or more dependents, 70% of wages.

14 b. **[For two dependents, 55% of wages]** (Deleted by amendment,
15 P.L. , c.).

16 c. **[For three dependents, 60% of wages]** (Deleted by amendment,
17 P.L. , c.).

18 d. **[For four dependents, 65% of wages]** (Deleted by amendment,
19 P.L. , c.).

20 e. **[For five or more dependents, 70% of wages]** (Deleted by
21 amendment, P.L. , c.).

22 f. The term "dependents" shall apply to and include any or all of
23 the following who are dependent upon the deceased at the time of
24 accident or the occurrence of occupational disease, or at the time of
25 death, namely: husband, wife, parent, stepparents, grandparents,
26 children, stepchildren, grandchildren, child in esse, posthumous child,
27 illegitimate children, brothers, sisters, half brothers, half sisters, niece,
28 nephew. Legally adopted children shall, in every particular, be
29 considered as natural children. Dependency shall be conclusively
30 presumed as to the decedent's spouse and to any natural child of a
31 decedent under 18 years of age or, if enrolled as a full-time student,
32 under 23 years of age, who was actually a part of the decedent's
33 household at the time of the decedent's death. Every provision of this
34 article applying to one class shall be equally applicable to the other.
35 Should any dependent of a deceased employee die during the period
36 covered by such weekly payments the right of such dependent to
37 compensation under this section shall cease, but should the surviving
38 spouse of a deceased employee remarry during such period and before
39 the total compensation is paid, the spouse shall be entitled to receive
40 the remainder of the compensation which would have been due the
41 spouse had the spouse not remarried, or 100 times the amount of
42 weekly compensation paid immediately preceding the remarriage,

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 whichever is the lesser. The foregoing schedule applies only to
2 persons wholly dependent, and in the case of persons only partially
3 dependent, except in the case of the surviving spouse and children who
4 were actually a part of the decedent's household at the time of death,
5 the compensation shall be such proportion of the scheduled percentage
6 as the amounts actually contributed to them by the deceased for their
7 support constituted of his total wages and the provision as to a
8 minimum of 20% of the average weekly wage as set forth in subsection
9 a. of R.S.34:15-12 shall not apply to such compensation. In
10 determining the number of dependents, where the deceased employee
11 was a minor, the number of persons dependent upon the deceased
12 employee shall be determined in the same way as if the deceased
13 employee were an adult, notwithstanding any rule of law as to the
14 person entitled to a minor's wages.

15 g. Compensation shall be computed upon the foregoing basis.
16 Distribution shall be made among dependents, if more than one,
17 according to the order of the Division of Workers' Compensation,
18 which shall, when applied to for that purpose, determine, upon the
19 facts being presented to it, the proportion to be paid to or on behalf of
20 each dependent according to the relative-dependency. Payment on
21 behalf of infants shall be made to the surviving parent, if any, or to the
22 statutory or testamentary guardian.

23 h. If death results from the accident or occupational disease,
24 whether there be dependents or not, expenses of the last sickness of
25 the deceased employee shall be paid in accordance with the provisions
26 for medical and hospital service as set forth in R.S.34:15-15. In
27 addition, the cost of burial and of a funeral, not to exceed \$3,500 shall
28 be paid to the dependent or other person having paid the costs of
29 burial and the funeral. In the event that the dependent or other person
30 has paid less than \$3,500 for the costs of burial and the funeral, the
31 dependent or other person shall be reimbursed in the amount paid and,
32 if the costs of burial and the funeral exceed the amount so paid, the
33 difference between the said amount and \$3,500 or so much thereof as
34 may be necessary to pay the cost of burial and the funeral, shall be
35 paid to the undertaker or embalmer or the dependent or other person
36 having paid the costs of burial and the funeral. In the event that no
37 part of the costs of burial and the funeral have been paid, the amount
38 of such cost of burial and the funeral, not to exceed \$3,500, shall be
39 paid to the undertaker or embalmer or the dependent or other person
40 who is to pay the costs of burial and the funeral.

41 i. In computing compensation to those named in this section,
42 except husband, wife, parents and stepparents, and except as otherwise
43 provided in this section, only those under 18 or over 40 years of age
44 shall be included and then only for that period in which they are under
45 18 or over 40; provided, however, that payments to such physically or
46 mentally deficient persons as are for such reason dependent shall be

1 made during the full compensation period of 450 weeks.

2 j. The maximum compensation in case of death shall be subject to
3 the maximum compensation as stated in subsection a. of R.S.34:15-12
4 and a minimum of 20% of average weekly wages per week as set forth
5 in subsection a. of R.S.34:15-12, except in the case of partial
6 dependency as provided in this section. This compensation shall be
7 paid, in the case of a surviving spouse, during the entire period of
8 survivorship or until such surviving spouse shall remarry and, in the
9 case of other dependents, during 450 weeks and if at the expiration of
10 450 weeks there shall be one or more dependents under 18 years of
11 age, compensation shall be continued for such dependents until they
12 reach 18 years of age, or 23 years of age while enrolled as a full-time
13 student, at the schedule provided under [subsections] subsection a.
14 [to e.] of this section.

15 (cf: P.L.1995, c.185, s.1)

16

17 2. R.S.34:15-30 is amended to read as follows:

18 34:15-30. When employer and employee have accepted the
19 provisions of this article as aforesaid, compensation for personal
20 injuries to or for death of [such] the employee by any compensable
21 occupational disease arising out of and in the course of his
22 employment, as hereinafter defined, shall be made by the employer to
23 the extent hereinafter set forth and without regard to the negligence of
24 the employer, except that no compensation shall be payable when the
25 injury or death by occupational disease is caused by willful
26 self-exposure to a known hazard or by the employee's willful failure to
27 make use of a reasonable and proper guard or personal protective
28 device furnished by the employer which has been clearly made a
29 requirement of the employee's employment by the employer and which
30 an employer can properly document that despite repeated warnings,
31 the employee has willfully failed to properly and effectively utilize,
32 provided, however, this latter provision shall not apply where there is
33 such imminent danger or need for immediate action which does not
34 allow for appropriate use of personal protective device or devices.
35 The employee or the surviving dependents of the employee may obtain
36 full compensation for injury or death by a compensable occupational
37 disease from any employer or employers, if the employee was, in the
38 course of employment with that employer or those employers, exposed
39 to a deleterious substance which is a cause of the occupational disease,
40 and it shall not be a defense to the claim that an employer was not the
41 last employer or that the latency period for the exposure is not
42 adequate.

43 (cf: P.L.1979, c.283, s.9)

44

45 3. R.S.34:15-32 is amended to read as follows:

46 34:15-32. The compensation payable for death or disability total

1 in character and permanent in quality resulting from an occupational
2 disease shall be the same in amount and duration and shall be payable
3 in the same manner and to the same persons as would have been
4 entitled thereto had the death or disability been caused by an accident
5 arising out of and in the course of the employment, except that for any
6 employee or dependent who is not entitled to receive special
7 adjustment benefits pursuant to section 1 of P.L.1980, c.83 (C.34:15-
8 95.4):

9 a. In the case of disability total in character and permanent in
10 quality which manifests itself after the last date of exposure with the
11 liable employer, the weekly benefit amount shall be calculated as if the
12 employee had continued working until the date of manifestation, and
13 be based on the amount that the employee's weekly wage would have
14 been at the time of manifestation, which shall be determined by
15 increasing the employee's weekly wages received prior to the last date
16 of exposure with the liable employer by the percentage increase in the
17 average weekly wage for all workers covered by the "unemployment
18 compensation law" (R.S.43:21-1 et seq.) from that last date of
19 exposure to the date of manifestation.

20 b. In the case of death from occupational disease which occurs
21 after the last date of exposure with the liable employer, the weekly
22 benefit amount shall be calculated as if the employee had continued
23 working until the date of death, and be based on the amount that the
24 employee's weekly wage would have been at the time of death, which
25 shall be determined by increasing the employee's weekly wages
26 received prior to the last date of exposure with the liable employer by
27 the percentage increase in the average weekly wage for all workers
28 covered by the "unemployment compensation law" (R.S.43:21-1 et
29 seq.) from that last date of exposure to the date of death.

30 In determining the duration of temporary and permanent partial
31 disability, either or both, and the duration of payment for the disability
32 due to occupational diseases, the same rules and regulations as are
33 now applicable to accident or injury occurring under this article shall
34 apply, except that in the case of an occupational disease which
35 manifests itself after the last date of exposure with the liable employer,
36 the weekly benefit amount shall be calculated as if the employee had
37 continued working until the date of manifestation, and be based on the
38 amount that the employee's weekly wage would have been at the time
39 of manifestation, which shall be determined by increasing the
40 employee's weekly wages received prior to the last date of exposure
41 with the liable employer by the percentage increase in the average
42 weekly wage for all workers covered by the "unemployment
43 compensation law" (R.S.43:21-1 et seq.) from that last date of
44 exposure to the date of manifestation.

1 4. R.S.34:15-33 is repealed.

2

3 5. This act shall take effect immediately.

4

5

6

STATEMENT

7

8 This bill permits a worker or the surviving dependents of the
9 worker to obtain workers' compensation from any employer or
10 employers, if the worker was, in the course of employment with that
11 employer or those employers, exposed to a deleterious substance
12 which is a cause of the occupational disease, without regard to the
13 latency period for the exposure or whether the employer was the last
14 employer of the worker. The current practice of limiting responsibility
15 to the last employer, when combined with the long latency periods of
16 some occupational diseases, often prevents the recovery of any
17 compensation.

18 The bill also changes the procedures for calculating the weekly
19 benefit amount in an occupational disease claim in which the disease
20 manifests itself or causes death after the last date of exposure with the
21 liable employer. Current law calculates benefit rates on the basis of
22 the worker's weekly wage at the time of last exposure with a liable
23 employer. The bill instead requires that benefit rates be calculated as
24 if the worker had worked until the time of manifestation, or of death,
25 in the case of benefits for surviving dependents, and be based on the
26 amount that the worker's weekly wage would have been at the time of
27 manifestation or death. The bill makes an exception for cases of death
28 or permanent total disability occurring prior to January 1, 1980,
29 because current law already provides for a cost of living adjustment in
30 those cases.

31 In addition, the bill repeals R.S.34:15-33, which currently requires
32 the worker or the worker's dependents to notify the employer within
33 five months after an exposure to an occupational disease ends, or 90
34 days after the worker knew, or should have known, about the disease
35 and its relation to the employment, whichever is later. Any claimant
36 for compensation would still be subject to the requirements if
37 R.S.34:15-34 that a claim for compensation for occupational disease
38 be filed within two years after the date when the claimant first knew
39 the nature of the disability and its relation to the employment.

40 Finally, the bill increases the benefit rate surviving dependents of a
41 worker who dies because of occupational illness or injury to 70% of
42 the worker's weekly wage without regard to the number of
43 dependents.

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1927

with committee amendments

STATE OF NEW JERSEY

DATED: February 6, 2003

The Assembly Labor Committee reports favorably, and with committee amendments, Assembly Bill No. 1927.

As amended by the committee, this bill provides that in any asbestos claim, if the employer or insurer who provided coverage when a claimant was last exposed to asbestos cannot be located or, in a case involving multiple employers in which the last employer where the worker was exposed cannot reasonably be identified, the claim will be paid from the Second Injury Fund. As amended, the bill provides that the Second Injury Fund may then seek recovery of its costs of paying the claim against any liable insurer or employer or against the stock workers' compensation security fund, or the mutual workers' compensation security fund, if an insolvent insurer is determined to be liable, or against the New Jersey Self-Insurers Guaranty Association if an insolvent self-insurer is determined to be liable.

The bill changes the procedures for calculating the weekly benefit amount in any occupational disease claim in which the disease manifests itself after the last date of exposure with the liable employer. Current law calculates benefit rates on the basis of the worker's weekly wage at the time of last exposure with a liable employer. The bill instead requires benefit rates to be calculated as if the worker had worked until the time of manifestation, or of death, in the case of benefits for surviving dependents, and be based on the amount that the worker's weekly wage would have been at the time of manifestation or death. The bill makes an exception for cases of death or permanent total disability occurring prior to January 1, 1980, because current law already provides a cost of living adjustment in those cases.

In addition, the bill repeals R.S.34:15-33, which currently requires the worker or the worker's dependents to notify the employer within five months after an exposure to an occupational disease ends, or 90 days after the worker knew, or should have known, about the disease and its relation to the employment, whichever is later. The employee is, however, still required by R.S.34:15-34 (which is not modified by the bill) to file a claim not more than two years after the date the employee knew the nature of the disability and its relationship to the employment.

Finally, the bill increases the benefit rate surviving dependents of a worker who dies because of occupational illness or injury to 70% of the worker's weekly wage without regard to the number of dependents. Current law sets benefits at 50% of the dead employee's wages for a single surviving dependent, plus 5% for each additional dependent, up to a maximum of 70%.

COMMITTEE AMENDMENTS:

The amendments modified the provisions of the bill regarding which employers are held liable to pay benefits in certain claims. Unamended, the bill permitted, in any claim involving exposure to a substance causing an occupational disease, the worker or surviving dependent of the worker to obtain workers' compensation from any employer or employers with whom the worker was exposed to the material, without regard to the latency period for the exposure or whether the employer was the last employer of the worker. The amendments modify these provisions to have the claims directed against the Second Injury Fund, which may then recover costs against other employers and insurers. The amendments also limit the application of those provisions only to cases involving asbestos, excluding their application to any other occupational disease claim.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 1927

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 8, 2004

The Assembly Appropriations Committee reports favorably Assembly Bill No. 1927 (1R), with committee amendments.

Assembly Bill No. 1927 (1R), as amended, 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 will 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 will 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 will 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.

As amended and reported by the committee, this bill is identical to Senate Bill No. 1522 (2R) as also reported by the committee.

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.

COMMITTEE AMENDMENTS:

The amendments: (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) delete other provisions of the bill which would otherwise have changed the law with respect to the way in which certain occupational disease claims are calculated and paid.

LEGISLATIVE FISCAL ESTIMATE
[Second Reprint]
ASSEMBLY, No. 1927
STATE OF NEW JERSEY
210th LEGISLATURE

DATED: FEBRUARY 4, 2004

SUMMARY

Synopsis: Concerns workers' compensation for occupational disease claims and workers' compensation benefit rates for surviving dependents.

Type of Impact: State and Local Government costs related to workers' compensation

Agencies Affected: State and Local Governments as employers

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost	\$80,000	\$80,000	\$80,000
Local Cost	\$205,050	\$205,050	\$205,050

- * The Office of Legislative Services (OLS) estimates that section 1 of the bill could potentially cost State and local governments, as employers, \$80,000 and \$205,050 per year, respectively.
- * The provisions of section 2 of the bill, which relates to asbestos related occupational disease claims, may cost the State and local governments an indeterminate amount as employers. To ensure sufficient funding for claims, funding amounts will be transferred from the Second Injury Fund to the uninsured employer's fund. The amounts transferred from the Second Injury Fund will be included in the determination of Second Injury Fund surcharges and assessments. However, potential surcharges and assessments from the Second Injury Fund would not affect the State because the State is exempt from paying into the fund. Self-insured local governments are also exempt from paying into that fund.

BILL DESCRIPTION

Assembly Bill No. 1927 (2R) of 2004 amends R.S.34:15-13 to compute workers' compensation death benefits for surviving dependents based on 70 percent of the employee's wages, regardless of the number of dependents. Currently, compensation for death claims is set at 50 percent of the employee's wages for one surviving dependent, plus 5 percent for each additional dependent up to a maximum of 70 percent.

In addition, the bill provides that in the case of a claim for compensation for an occupational disease which resulted 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 which time 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. In such cases, an application shall be made to the uninsured employer's fund and any award by a judge of compensation shall be payable from the fund. The uninsured employer's fund shall have the right of subrogation against any insurer or employer identified as liable; against the stock workers' compensation security fund or the mutual workers' compensation fund, if an insolvent insurer is determined to be liable; or against the New Jersey Self-Insurers Guaranty Association if an insolvent self-insurer is determined to be liable. Compensation shall be based on the date of last exposure if known, as determined by a workers' compensation judge. To ensure sufficient funding for claims, funding amount shall be transferred from the Second Injury Fund to the uninsured employer's fund. The amounts transferred from the Second Injury Fund will be included in the determination of surcharges and assessments. However, these amounts shall be excluded from the determination of surcharges and assessments for the uninsured employers' fund.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The Office of Legislative Services (OLS) determines that section 1 of the bill will cost State and local governments \$80,000 and \$205,050 per year, respectively. The State cost is based on a reasonable projected scenario that assumes an average claim currently has two dependents (making the average current benefit amount equal to 55 percent of the workers' wages); and that the cap on all claims of 75 percent of the average weekly wage for all workers (currently \$630) will reduce death benefit claims under the bill from a nominal rate of 70 percent to an effective rate of 65 percent of wages, or a 10 percent increase over the current average benefit. This increases total death benefit costs by 18 percent over the previous total of \$12 million paid in death benefits per year. This would produce a total annual cost 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 total \$40 million in workers' compensation for State employees appropriated in the current budget would increase State costs by approximately \$80,000 per year.

Due to the fact that there is no available data establishing the monetary amount in workers' compensation benefits paid out by local government employers, the fiscal impact to local government employers is estimated on a different scenario than that of the State government as an employer. This estimate is based on the assumption that a total of \$2.0 million may be expended by all employers as explained previously. Approximately 4 million employees comprise

the civilian labor force, according to the New Jersey Department of Labor. Taking this into account, employers may expect to pay an estimated \$0.50 per employee annually. The November 2003 "Economic Indicators" report produced by the Department of Labor states that in 2002, 410,100 workers were employed by local governments in the State, of which 243,200 and 166,900 represented local government education and "other" local government employees, respectively. The calculated cost for all New Jersey local governments is approximately \$205,050, with local government education employers comprising approximately \$121,600 of that total, and "other" local government employers comprising the balance of \$83,450.

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 in claims, but reapportion the liability to pay for any such claim among employers, insurers and the uninsured employer's fund. It is not possible to determine the net effect to the State or local governments as an employer because there is no data which details the amount of asbestos claims or their ultimate costs as it relates to the provisions in section 2 of the bill. To ensure sufficient funding for claims, funding amounts will be transferred from the Second Injury Fund to the uninsured employer's fund. The amounts transferred from the Second Injury Fund will be included in the determination of Second Injury Fund surcharges and assessments. However, potential surcharges and assessments from the Second Injury Fund would not affect the State because the State is exempt from paying into the fund. Self-insured local governments are also exempt from paying into that fund. The amounts transferred to the uninsured employer's fund will be excluded from the determination of surcharges and assessments for the uninsured employer's fund.

Section: *Commerce, Labor and Industry*

Analyst: *Sonya S. Hough*
Associate Fiscal Analyst

Approved: *Frank W. Haines III*
Assistant Legislative Budget and Finance Officer

This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67.