

1/11/88

38A:13-1 et al

LEGISLATIVE HISTORY CHECKLIST

NJSA: 38A:13-1 et al

(State militia-- injury benefits-- change)

LAWS OF: 1987

CHAPTER: 217

Bill No: S2719

Sponsor(s): Hurley and Cardinale

Date Introduced: Other 27, 1986

Committee: Assembly: Appropriations

Senate: Law, Public Safety and Defense

Amended during passage: Yes Amendments during passage denoted by asterisks.

Date of Passage: Assembly: June 8, 1987

Senate: May 11, 1987

Date of Approval: July 29, 1987

Following statements are attached if available:

Sponsor statement: Yes

Committee statement: Assembly Yes

Senate Yes

Fiscal Note: No

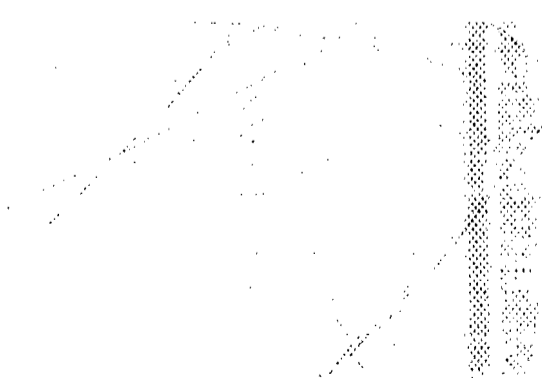
Veto Message: No

Message on Signing: No

Following were printed:

Reports: No

Hearings: No



[OFFICIAL COPY REPRINT]

SENATE, No. 2719

STATE OF NEW JERSEY

INTRODUCED OCTOBER 27, 1986

By Senators HURLEY and CARDINALE

Referred to Committee on Law, Public Safety and Defense

AN ACT concerning military compensation benefits, amending N. J. S. 38A:13-1, N. J. S. 38A:13-3, and N. J. S. 38A:13-4, and supplementing Title 38A of the New Jersey Statutes.

1 BE IT ENACTED *by the Senate and General Assembly of the State*  
2 *of New Jersey:*

1 1. N. J. S. 38A:13-1 is amended to read as follows:

2 38A:13-1. A member of the organized militia who incurs an  
3 injury, disease or disability in the [performance] *line* of duty  
4 [ordered by competent authority, and such injury, disease or  
5 disability is determined to be in line of duty], and [the] *whose*  
6 claim is approved by the Adjutant General, *or his duly appointed*  
7 *representatives* shall be entitled to [medical care and to receive]  
8 the same [compensation for temporary or permanent disabilities]  
9 *benefits* as [is] *are* provided in article 2 of chapter 15 of Title 34.  
10 [In the event such] *If the* member incurs death under the same  
11 conditions, the dependent members of the family of the deceased, if  
12 any, shall be entitled to compensation as provided in article 2 of  
13 chapter 15 of Title 34. *To the extent that a member or dependent*  
14 *may be entitled to receive federal benefits for particular elements*  
15 *of a claim, the benefits provided pursuant to this section shall be*  
16 *reduced by the amount of the federal \*[entitlement]\* \*benefits*  
17 *paid\* for each element of a claim.*

18 As used in this chapter "in line of duty" means that the injury,  
19 disease, disability or death has been sustained in the discharge of  
20 duty, *in going to and from that duty, or in responding to, preparing*  
21 *for, or returning from an emergency while under orders from*

**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 printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

\*—Senate committee amendments adopted April 30, 1987.

22 *competent authority* [and is not due to any voluntary act or  
23 traceable to willful neglect, fault or his own vicious habits].

1 2. (New Section) In any claim for compensation for injury or  
2 death from cardiovascular or cerebral vascular causes, the claimant  
3 shall prove by a preponderance of the credible evidence that the  
4 injury or death was produced by effort or strain related to the  
5 performance of duty involving a substantial condition, event or  
6 happening in excess of the wear and tear of the claimant's daily  
7 living and in reasonable medical probability caused in a material  
8 degree the cardiovascular or cerebral vascular injury or death  
9 resulting therefrom.

10 Material degree means an appreciable degree or a degree  
11 substantially greater than de minimis.

1 3. (New section) Any person who becomes a member of the  
2 organized militia of the State of New Jersey shall be deemed to  
3 have surrendered his right to any other method, form or amount of  
4 compensation or determination thereof from the State or the  
5 organized militia, other than as provided in this chapter for any  
6 injury or death occurring to him in line of duty. Such entry into  
7 the militia shall bind the member's personal representatives, sur-  
8 viving spouse and next of kin, as well as the State of New Jersey  
9 and the organized militia.

10 Neither the State, the organized militia nor any member of the  
11 organized militia shall be liable to anyone at common law or  
12 otherwise for an injury or death compensable under this chapter,  
13 including any injury or death that results from an act or omission  
14 occurring while the member was in the same service of the organized  
15 militia as the person whose actions caused that injury or death,  
16 except for injury or death caused by an intentionally wrongful act  
17 of a comember.

1 4. N. J. S. 38A :13-3 is amended to read as follows:

2 38A :13-3. The Adjutant General may order an examination of a  
3 claimant to be made from time to time by a medical officer or  
4 officers or physician designated for that purpose. *If the claimant*  
5 *refuses to permit such examination, he shall be barred from all*  
6 *right to any claim or allowance under this chapter.* The Adjutant  
7 General may direct the removal of the claimant to a hospital for  
8 treatment on *the* recommendation of [the] a medical officer or  
9 *officers or a physician based on an examination.* If the claimant  
10 refuses to permit such examination or to go to such hospital, or to  
11 follow the advice given or treatment prescribed for him therein, he  
12 [shall] *may* be barred from all right to any claim or allowance  
13 under this chapter *at the discretion of the Adjutant General.*

1 5. N. J. S. 38A :13-4 is amended to read as follows :

2 38A:13-4. *Notwithstanding the provisions of section 10 of P. L.*  
 3 *1978, c. 67 (C. 52:14F-8), contested case matters before the Depart-*  
 4 *ment of Defense shall be presented to the* ~~[[The]]~~ *Adjutant General*  
 5 *who may appoint a board of officers to inquire into the merits of*  
 6 *any claim under this chapter. [Such] The board shall have the*  
 7 *[same] power [as is possessed by presidents of courts-martial]*  
 8 *to take evidence, [administer] administer oaths, issue subpoenas,*  
 9 *compel witnesses to attend and testify, and produce books and*  
 10 *papers, and to punish their failure to do so. The reports and*  
 11 *findings of the board are subject to the approval or disapproval of*  
 12 *the Adjutant General who may accept, reject or modify the report*  
 13 *and the findings of fact and conclusions of law of the board of*  
 14 *officers. The Adjutant General may in his discretion request the*  
 15 *\*[Office of Administrative Law]\* \*Division of Workers' Com-*  
 16 *pensation in the Department of Labor\* to assign \*[an administra-*  
 17 *tive law judge]\* \*a workers' compensation judge\* to hear a con-*  
 18 *tested matter in place of the board of officers. The Adjutant*  
 19 *General shall promulgate regulations governing the procedures*  
 20 *for hearing contested cases \*prior to a referral of a contested case*  
 21 *to the Division of Workers' Compensation in the Department of*  
 22 *Labor\*.*

1 6. This act shall take effect immediately and shall be applicable  
 2 to all actions and proceedings that accrue, are pending or are  
 3 filed after June 1, 1986.

---

POLICE, SECURITY AND DEFENSE

Alters injury benefits for members of State militia.

---

1 5. N. J. S. 38A :13-4 is amended to read as follows:

2 38A:13-4. *Notwithstanding the provisions of section 10 of P. L.*  
 3 *1978, c. 67 (C. 52:14F-8), contested case matters before the Depart-*  
 4 *ment of Defense shall be presented to the [The] Adjutant General*  
 5 *who may appoint a board of officers to inquire into the merits of*  
 6 *any claim under this chapter. [Such] The board shall have the*  
 7 *[same] power [as is possessed by presidents of courts-martial]*  
 8 *to take evidence, [adminster] administer oaths, issue subpoenas,*  
 9 *compel witnesses to attend and testify, and produce books and*  
 10 *papers, and to punish their failure to do so. The reports and*  
 11 *findings of the board are subject to the approval or disapproval of*  
 12 *the Adjutant General who may accept, reject or modify the report*  
 13 *and the findings of fact and conclusions of law of the board of*  
 14 *officers. The Adjutant General may in his discretion request the*  
 15 *Office of Administrative Law to assign an administrative law judge*  
 16 *to hear a contested matter in place of the board of officers. The*  
 17 *Adjutant General shall promulgate regulations governing the*  
 18 *procedures for hearing contested cases.*

1 6. This act shall take effect immediately and shall be applicable  
 2 to all actions and proceedings that accrue, are pending or are  
 3 filed after June 1, 1986.

---

#### STATEMENT

This bill amends and supplements the law governing compensation for injuries to members of the organized militia (N. J. S. 38A:13-1 et seq.) to: (1) prohibit suits by militia members against comembers to recover damages for injuries sustained in the line of duty; (2) provide that persons injured while on duty shall receive the same benefits as other State employees under article 2 of the workers' compensation law (R. S. 34:15-1 et seq.); (3) exempt contested claims matters before the Department of Defense from the provisions of the "Administrative Procedure Act;" (4) stipulate that a board of officers and not an administrative law judge shall hear compensation claims, unless the Adjutant General requests otherwise; and (5) authorizes the Adjutant General to promulgate regulations to govern the procedures of claims hearings. The bill would affect claims made or pending after June 1, 1986.

The purpose of the bill is to rectify the New Jersey State Supreme Court's decision in *Phillips v. State, Department of Defense*, 98 N. J. 235 (1985). In that case, the court ruled that a member of the State's militia could sue a fellow guardsman in a civil action for injuries attributable to a fellow member's negligence

suffered in the line of duty. The workers' compensation law precludes lawsuits by fellow employees against their coworkers. The court invited a legislative response.

---

POLICE, SECURITY AND DEFENSE

Alters injury benefits for members of State militia.

---

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

**SENATE, No. 2719**

[OFFICIAL COPY REPRINT]

**STATE OF NEW JERSEY**

DATED: MAY 28, 1987

The Assembly Appropriations Committee favorably reports Senate Bill No. 2719 (OCR).

Senate Bill No. 2719 (OCR) modifies the benefits and determination of liability regarding injuries to members of the New Jersey National Guard under the military compensation law (N. J. S. 38A:13-1 et seq.). The bill makes the following specific changes: (a) entitles members injured in the line of duty to the benefits available to other State employees under article 2 of the workers' compensation law (R. S. 34:15-1 et seq.); (b) defines "in the line of duty" to include preparing for, responding and going to, discharging and returning from, duty while under orders from competent authority; (c) requires that any benefits received be reduced by the amount of federal benefits received; (d) incorporates the workers' compensation law standards of proof for claims involving cardiovascular and cerebral vascular-related injury or death into the military compensation law; (e) eliminates the liability of the State, the National Guard and its members for injury or death occurring in the line of duty, except as provided under the military compensation law and except for injury or death due to an intentionally wrongful act by a member; (f) requires claimants to submit to medical examinations as ordered by the Adjutant General and provides for discretionary denial of benefits for refusing to submit to an examination; and (g) clarifies that contested claims may be heard before a board of officers appointed by the Adjutant General or before a workers' compensation judge.

**FISCAL IMPACT:**

This bill makes no appropriation; the potential fiscal impact of the provisions of the bill has not been determined at this time.

SENATE LAW, PUBLIC SAFETY AND DEFENSE  
COMMITTEE

STATEMENT TO

**SENATE, No. 2719**

with Senate committee amendments

---

**STATE OF NEW JERSEY**

---

DATED: APRIL 30, 1987

The Senate Law, Public Safety and Defense Committee favorably reports Senate Bill No. 2719 with amendments.

As amended, Senate Bill No. 2719 entitles guardsmen injured in the line of duty to the benefits available to other State employees under article 2 of the workers' compensation law (R. S. 34:15-1 et seq.). This bill also defines "in the line of duty" to include preparing for, responding and going to, discharging and returning from duty, while under orders from competent authority; requires that any benefits received be reduced by the amount of federal benefits received; incorporates the workers' compensation law standards of proof for claims involving cardiovascular and cerebral vascular-related injury or death into the military compensation law; eliminates the liability of the State, National Guard and its members for injury or death occurring in the line of duty, except as provided under the military compensation law and except for injury or death due to an intentionally wrongful act by a member; requires claimants to submit to medical examinations as ordered by the Adjutant General and provides for discretionary denial of benefits for refusing to submit to an examination; and clarifies that contested claims may be heard before a board of officers appointed by the Adjutant General or before a workers' compensation judge.

The committee amended the bill to clarify that benefits payable pursuant to the State military compensation law will be offset by benefits paid by the federal government and that the Adjutant General may request the Division of Workers' Compensation in the Department of Labor, and not the Office of Administrative Law, to hear contested cases.