File No. 16

Senate Bill No. 81

Senate, March 9, 1998. The Committee on Labor and Public Employees reported through SEN. PRAGUE, 19th DIST., Chairman of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING WORKERS' COMPENSATION DEATH BENEFITS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (2) of subsection (a)
2 of section 31-306 of the general statutes, as
3 amended by section 3 of public act 97-205, is
4 repealed and the following is substituted in lieu
5 thereof:
6 (2) To those wholly dependent upon the
7 deceased employee at the date of his injury, a
8 weekly compensation equal to seventy-five per cent
9 of the average weekly earnings of the deceased
10 calculated pursuant to section 31-310, 31-310a,
11 31-310b OR 31-310c, AS AMENDED BY THIS ACT, after
12 such earnings have been reduced by any deduction
13 for federal or state taxes, or both, and for the
14 federal Insurance Contributions Act made from such
15 employee's total wages received during the period
16 of calculation of the employee's average weekly
17 wage pursuant to [said] section 31-310, 31-310a,
18 31-310b OR 31-310c, AS AMENDED BY THIS ACT, as of
19 the date of the injury but not more than the
20 maximum weekly compensation rate set forth in
21 section 31-309 for the year in which the injury
22 occurred or less than twenty dollars weekly. (A)
23 The weekly compensation rate of each dependent

24 entitled to receive compensation under this
25 section as a result of death arising from a
26 compensable injury occurring on or after October
27 1, 1977, shall be adjusted annually as provided in
28 this subdivision as of the following October
29 first, and each subsequent October first, to
30 provide the dependent with a cost-of-living
31 adjustment in his weekly compensation rate as
32 determined as of the date of the injury under
33 section 31-309. If the maximum weekly compensation
34 rate, as determined under the provisions of said
35 section 31-309, to be effective as of any October
36 first following the date of the injury, is greater
37 than the maximum weekly compensation rate
38 prevailing at the date of the injury, the weekly
39 compensation rate which the injured employee was
40 entitled to receive at the date of the injury
41 shall be increased by the percentage of the
42 increase in the maximum weekly compensation rate
43 required by the provisions of said section 31-309
44 from the date of the injury to such October first.
45 The cost-of-living increases provided under this
46 subdivision shall be paid by the employer without
47 any order or award from the commissioner. The
48 adjustments shall apply to each payment made in
49 the next succeeding twelve-month period commencing
50 with the October first next succeeding the date of
51 the injury. With respect to any dependent
52 receiving benefits on October 1, 1997, with
53 respect to any injury occurring on or after July
54 1, 1993, and before October 1, 1997, such benefit
55 shall be recalculated to October 1, 1997, as if
56 such benefits had been subject to recalculation
57 annually under this subparagraph. The difference
58 between the amount of any benefits which would
59 have been paid to such dependent if such benefits
60 had been subject to such recalculation and the
61 actual amount of benefits paid during the period
62 between such injury and such recalculation shall
63 be paid to the dependent not later than December
64 1, 1997, in a lump-sum payment. The employer or
65 his insurer shall be reimbursed by the Second
66 Injury Fund, as provided in section 31-354, for
67 adjustments, including lump-sum payments, payable
68 under this subparagraph for deaths from
69 compensable injuries occurring on or after July 1,
70 1993, and before October 1, 1997, upon
71 presentation of any vouchers and information that

72 the Treasurer shall require. (B) The weekly
73 compensation rate of each dependent entitled to
74 receive compensation under this section as a
75 result of death arising from a compensable injury
76 occurring on or before September 30, 1977, shall
77 be adjusted as of October 1, 1977, and October 1,
78 1980, and thereafter, as provided in this
79 subdivision to provide the dependent with partial
80 cost-of-living adjustments in his weekly
81 compensation rate. As of October 1, 1977, the
82 weekly compensation rate paid prior to October 1,
83 1977, to the dependent shall be increased by
84 twenty-five per cent. The partial cost-of-living
85 adjustment provided under this subdivision shall
86 be paid by the employer without any order or award
87 from the commissioner. In addition, as of October
88 1, 1980, and on each subsequent October first, the
89 weekly compensation rate of each dependent shall
90 be increased to provide further cost-of-living
91 adjustments in his weekly compensation rate. If
92 the maximum weekly compensation rate as determined
93 under the provisions of said section 31-309
94 existing on October 1, 1977, to be effective as of
95 any October first following October 1, 1979, is
96 greater than the compensation rate prevailing on
97 October 1, 1979, the weekly compensation rate
98 shall be increased by the percentage of the
99 increase in the maximum compensation rate over the
100 maximum compensation rate of October 1, 1979, as
101 determined under the provisions of said section
102 31-309 existing on October 1, 1977. The cost of
103 the adjustments shall be paid by the employer or
104 his insurance carrier who shall be reimbursed
105 therefor from the Second Injury Fund as provided
106 in section 31-354 upon presentation of any
107 vouchers and information that the Treasurer shall
108 require.
109 Sec. 2. Section 31-310c of the general
110 statutes is repealed and the following is
111 substituted in lieu thereof:
112 (a) For the purposes of this chapter, in the
113 case of an occupational disease the average weekly
114 wage shall be calculated as of the date of total
115 or partial incapacity to work. However, in the
116 case of an occupational disease which manifests
117 itself at a time when the worker has not worked
118 during the twenty-six weeks immediately preceding
119 the diagnosis of such disease, the claimant's

120 average weekly wage shall be considered to be
121 equivalent to the greater of (1) the average
122 weekly wage determined pursuant to section 31-310
123 and adjusted pursuant to section 31-307a, AS
124 AMENDED, or (2) the average weekly wage earned by
125 the claimant during the fifty-two calendar weeks
126 last worked by the claimant, which wage shall be
127 determined in accordance with said section 31-310
128 and adjusted pursuant to said section 31-307a, AS
129 AMENDED.
130 (b) THE PROVISIONS OF SUBSECTION (a) OF THIS
131 SECTION SHALL APPLY TO CLAIMANTS WHOSE DATE OF
132 TOTAL OR PARTIAL INCAPACITY TO WORK IS BEFORE
133 OCTOBER 1, 1990.
134 Sec. 3. Subsection (a) of section 31-307 of
135 the general statutes is repealed and the following
136 is substituted in lieu thereof:
137 (a) If any injury for which compensation is
138 provided under the provisions of this chapter
139 results in total incapacity to work, the injured
140 employee shall be paid a weekly compensation equal
141 to seventy-five per cent of his average weekly
142 earnings as of the date of the injury, calculated
143 pursuant to section 31-310, 31-310a, 31-310b OR
144 31-310c, AS AMENDED BY THIS ACT, after such
145 earnings have been reduced by any deduction for
146 federal or state taxes, or both, and for the
147 federal Insurance Contributions Act made from such
148 employee's total wages received during the period
149 of calculation of the employee's average weekly
150 wage pursuant to said [section 31-310] SECTIONS;
151 but the compensation shall not be more than the
152 maximum weekly benefit rate set forth in section
153 31-309 for the year in which the injury occurred.
154 No employee entitled to compensation under this
155 section shall receive less than twenty per cent of
156 the maximum weekly compensation rate, as provided
157 in section 31-309, provided the minimum payment
158 shall not exceed seventy-five per cent of the
159 employee's average weekly wage, as determined
160 under [section 31-310] THE APPLICABLE SECTION, and
161 the compensation shall not continue longer than
162 the period of total incapacity.

163 LAB COMMITTEE VOTE: YEA 7 NAY 3 JF

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SB 81

STATE IMPACT	Cost (Workers' Compensation Fund), Potential Minimal Cost, see explanation below
MUNICIPAL IMPACT	Potential Minimal Cost, see explanation below
STATE AGENCY(S)	Workers' Compensation Commission, Various State Agencies

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: The passage of this bill would result in additional costs to the Workers' Compensation Commission (Workers' Compensation Fund) estimated at about $15,000. In addition, the State and municipalities could incur minimal additional costs as employers.

The bill makes several changes in the workers' compensation statutes that specify how workers' compensation benefit rates are determined for several types of workers, and restores workers' compensation benefits eligibility to certain claimants or their dependents whose benefits were eliminated in a January 1997 Appellate Court ruling. This would require the Workers' Compensation Commission to develop and publish a new benefits rate table, at an estimated cost of $15,000. This could also result in an increase in the cost of benefits for all employers, including the State and municipalities, which is anticipated to be minimal.

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OLR BILL ANALYSIS

SB 81

AN ACT CONCERNING WORKERS' COMPENSATION DEATH BENEFITS

SUMMARY: The bill applies a 1990 law specifying how to determine the average weekly wage of an occupational disease claimant who did not work in the 26 weeks preceding the diagnosis of his disease to such claimants who became unable to work before October 1, 1990. Thus, it makes them, or their dependents if they die of the disease, eligible for workers' compensation benefits.

The bill also makes it clear that the same method of determining average weekly wages, and thus benefit eligibility, applies to occupational disease claimants with incapacity dates on or after October 1, 1990, who did not work in the 26 weeks before the diagnosis.

Finally, the bill specifies that, in determining death or total disability benefit rates for General Assembly members or supernumerary or volunteer police officers injured or killed on the job, workers' compensation commissioners must use the state's average weekly production wage (currently $605 per week) as the average weekly wage.

Workers' compensation benefits are based on the average weekly wage the claimant earned in the 52 weeks preceding the injury. The current benefit rate is 75% of the claimant's average weekly after-tax wages.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Average Weekly Wage--Occupational Disease Claims

When a claimant has an occupational disease and has not worked at all in the 26 weeks before the disease is diagnosed, the law sets his average weekly wage at the greater of (1) his average weekly wage for the 52-week-period immediately preceding the week he became totally or partially disabled from work, adjusted by whatever cost-of-living increases have been applied to workers' compensation benefits since that date or (2)

his average weekly wage for the 52 weeks last worked, adjusted for cost-of-living increases.

This law became effective on October 1, 1990. Under the date of injury rule applicable to workers' compensation cases, unless the General Assembly expressly states otherwise, changes that affect benefits available to workers' compensation claimants do not apply to people whose injuries occur before the effective date of the change. The bill makes the 1990 law apply to earlier injuries, thus overriding the date of injury rule in this instance.

BACKGROUND

Related Decision

In January 1997, the Appellate Court ruled that a widow whose husband died of cancer caused by exposure to asbestos during his employment was ineligible for workers' compensation death benefits because he did not earn any wages in the 26 weeks before the disease rendered him unable to work. The injury date in the case was July 11, 1989 and the claimant died on December 8, 1989. The court ruled that the 1990 law did not apply because it did not take effect until October 1, 1990. The workers' compensation commissioner and the Compensation Review Board had awarded benefits in the case on the grounds that the 1990 law merely codified a method for setting average weekly wages in such instances that was already being used by workers' compensation commissioners.

In a footnote, the court also stated that the 1990 law would not apply even to a death case arising after its effective date because the death benefit section of the workers' compensation law requires all benefits to be calculated by methods specified in CGS Sec. 31-310 and does not refer to alternative methods codified in other sections (Green v. General Dynamics Corp., 44 Conn. App. 112; 117).

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable Report
Yea 7 Nay 3