

House of Representatives, March 9, 1998. The Committee on Labor and Public Employees reported through REP. DONOVAN, 84th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING WORKERS' COMPENSATION BENEFITS FOR DEPENDENT SURVIVORS AND TOTALLY DISABLED WORKERS.

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

1 Section 1. Subsection (a) of section 31-306  
2 of the general statutes, as amended by section 3  
3 of public act 97-205, is repealed and the  
4 following is substituted in lieu thereof:

5 (a) Compensation shall be paid to dependents  
6 on account of death resulting from an accident  
7 arising out of and in the course of employment or  
8 from an occupational disease as follows:

9 (1) Four thousand dollars shall be paid for  
10 burial expenses in any case where the employee  
11 died on or after October 1, 1988. If there is no  
12 one wholly or partially dependent upon the  
13 deceased employee, the burial expenses of four  
14 thousand dollars shall be paid to the person who  
15 assumes the responsibility of paying the funeral  
16 expenses.

17 (2) To those wholly dependent upon the  
18 deceased employee at the date of his injury, a  
19 weekly compensation equal to seventy-five per cent  
20 of the average weekly earnings of the deceased  
21 calculated pursuant to section 31-310, after such

22 earnings have been reduced by any deduction for  
23 federal or state taxes, or both, and for the  
24 federal Insurance Contributions Act made from such  
25 employee's total wages received during the period  
26 of calculation of the employee's average weekly  
27 wage pursuant to said section 31-310, as of the  
28 date of the injury but not more than the maximum  
29 weekly compensation rate set forth in section  
30 31-309 for the year in which the injury occurred  
31 or less than twenty dollars weekly. (A) The weekly  
32 compensation rate of each dependent entitled to  
33 receive compensation under this section as a  
34 result of death arising from a compensable injury  
35 occurring on or after October 1, 1977, shall be  
36 adjusted annually as provided in this subdivision  
37 as of the following October first, and each  
38 subsequent October first, to provide the dependent  
39 with a cost-of-living adjustment in his weekly  
40 compensation rate as determined as of the date of  
41 the injury under section 31-309. If the maximum  
42 weekly compensation rate, as determined under the  
43 provisions of said section 31-309, to be effective  
44 as of any October first following the date of the  
45 injury, is greater than the maximum weekly  
46 compensation rate prevailing at the date of the  
47 injury, the weekly compensation rate which the  
48 injured employee was entitled to receive at the  
49 date of the injury OR OCTOBER 1, 1990, WHICHEVER  
50 IS LATER, shall be increased by the percentage of  
51 the increase in the maximum weekly compensation  
52 rate required by the provisions of said section  
53 31-309 from the date of the injury OR OCTOBER 1,  
54 1990, WHICHEVER IS LATER, to such October first.  
55 The cost-of-living increases provided under this  
56 subdivision shall be paid by the employer without  
57 any order or award from the commissioner. The  
58 adjustments shall apply to each payment made in  
59 the next succeeding twelve-month period commencing  
60 with the October first next succeeding the date of  
61 the injury. With respect to any dependent  
62 receiving benefits on the effective date of [this  
63 act] PUBLIC ACT 97-205 with respect to any injury  
64 occurring on or after July 1, 1993, and before the  
65 effective date of [this act] PUBLIC ACT 97-205,  
66 such benefit shall be recalculated to the  
67 effective date of [this act] PUBLIC ACT 97-205 as  
68 if such benefits had been subject to recalculation  
69 annually under this subparagraph. The difference

70 between the amount of any benefits which would  
71 have been paid to such dependent if such benefits  
72 had been subject to such recalculation and the  
73 actual amount of benefits paid during the period  
74 between such injury and such recalculation shall  
75 be paid to the dependent not later than December  
76 1, 1997, in a lump-sum payment. The employer or  
77 his insurer shall be reimbursed by the Second  
78 Injury Fund, as provided in section 31-354, for  
79 adjustments, including lump-sum payments, payable  
80 under this subparagraph for deaths from  
81 compensable injuries occurring on or after July 1,  
82 1993, and before the effective date of [this act]  
83 PUBLIC ACT 97-205, upon presentation of any  
84 vouchers and information that the Treasurer shall  
85 require. (B) The weekly compensation rate of each  
86 dependent entitled to receive compensation under  
87 this section as a result of death arising from a  
88 compensable injury occurring on or before  
89 September 30, 1977, shall be adjusted as of  
90 October 1, 1977, and October 1, 1980, and  
91 thereafter, as provided in this subdivision to  
92 provide the dependent with partial cost-of-living  
93 adjustments in his weekly compensation rate. As of  
94 October 1, 1977, the weekly compensation rate paid  
95 prior to October 1, 1977, to the dependent shall  
96 be increased by twenty-five per cent. The partial  
97 cost-of-living adjustment provided under this  
98 subdivision shall be paid by the employer without  
99 any order or award from the commissioner. In  
100 addition, [as of October 1, 1980, and] on each  
101 [subsequent] October first, the weekly  
102 compensation rate of each dependent AS OF OCTOBER  
103 1, 1990, shall be increased [to provide further  
104 cost-of-living adjustments in his weekly  
105 compensation rate. If the maximum weekly  
106 compensation rate as determined under the  
107 provisions of said section 31-309 existing on  
108 October 1, 1977, to be effective as of any October  
109 first following October 1, 1979, is greater than  
110 the compensation rate prevailing on October 1,  
111 1979, the weekly compensation rate shall be  
112 increased] by the percentage of the increase in  
113 the maximum compensation rate over the maximum  
114 compensation rate of October 1, [1979] 1990, as  
115 determined under the provisions of [said] section  
116 31-309 existing on October 1, 1977. The cost of  
117 the adjustments shall be paid by the employer or

118 his insurance carrier who shall be reimbursed  
119 therefor from the Second Injury Fund as provided  
120 in section 31-354 upon presentation of any  
121 vouchers and information that the Treasurer shall  
122 require.

123 (3) If the surviving spouse is the sole  
124 presumptive dependent, compensation shall be paid  
125 until death or remarriage.

126 (4) If there is a presumptive dependent  
127 spouse surviving and also one or more presumptive  
128 dependent children, all of which children are  
129 either children of the surviving spouse or are  
130 living with the surviving spouse, the entire  
131 compensation shall be paid to the surviving spouse  
132 in the same manner and for the same period as if  
133 the surviving spouse were the sole dependent. If,  
134 however, any of the presumptive dependent children  
135 are neither children of the surviving spouse nor  
136 living with the surviving spouse, the compensation  
137 shall be divided into as many parts as there are  
138 presumptive dependents. The shares of any children  
139 having a presumptive dependent parent shall be  
140 added to the share of the parent and shall be paid  
141 to the parent. The share of any dependent child  
142 not having a surviving dependent parent shall be  
143 paid to the father or mother of the child with  
144 whom the child may be living, or to the legal  
145 guardian of the child, or to any other person, for  
146 the benefit of the child, as the commissioner may  
147 direct.

148 (5) If the compensation being paid to the  
149 surviving presumptive dependent spouse terminates  
150 for any reason, or if there is no surviving  
151 presumptive dependent spouse at the time of the  
152 death of the employee, but there is at either time  
153 one or more presumptive dependent children, the  
154 compensation shall be paid to the children as a  
155 class, each child sharing equally with the others.  
156 Each child shall receive compensation until the  
157 child reaches the age of eighteen or dies before  
158 reaching age eighteen, provided the child shall  
159 continue to receive compensation up to the  
160 attainment of the age of twenty-two if unmarried  
161 and a full-time student, except any child who has  
162 attained the age of twenty-two while a full-time  
163 student but has not completed the requirements  
164 for, or received, a degree from a postsecondary  
165 educational institution shall be deemed not to

166 have attained age twenty-two until the first day  
167 of the first month following the end of the  
168 quarter or semester in which he is enrolled at the  
169 time, or if he is not enrolled in a quarter or  
170 semester system, until the first day of the first  
171 month following the completion of the course in  
172 which he is enrolled or until the first day of the  
173 third month beginning after such time, whichever  
174 occurs first. When a child's participation ceases,  
175 his share shall be divided among the remaining  
176 eligible dependent children, provided if any  
177 child, when he reaches the age of eighteen years,  
178 is physically or mentally incapacitated from  
179 earning, his right to compensation shall not  
180 terminate but shall continue for the full period  
181 of incapacity.

182 (6) In all cases where there are no  
183 presumptive dependents, but where there are one or  
184 more persons wholly dependent in fact, the  
185 compensation in case of death shall be divided  
186 according to the relative degree of their  
187 dependence. Compensation payable under this  
188 subdivision shall be paid for not more than three  
189 hundred and twelve weeks from the date of the  
190 death of the employee. The compensation, if paid  
191 to those wholly dependent in fact, shall be paid  
192 at the full compensation rate. The compensation,  
193 if paid to those partially dependent in fact upon  
194 the deceased employee as of the date of the  
195 injury, shall not, in total, be more than the full  
196 compensation rate nor less than twenty dollars  
197 weekly, nor, if the average weekly sum contributed  
198 by the deceased at the date of the injury to those  
199 partially dependent in fact is more than twenty  
200 dollars weekly, not more than the sum so  
201 contributed.

202 (7) When the sole presumptive dependents are,  
203 at the time of the injury, nonresident aliens and  
204 the deceased has in this state some person or  
205 persons who are dependent in fact, the  
206 commissioner may in his discretion equitably  
207 apportion the sums payable as compensation to the  
208 dependents.

209 Sec. 2. Section 31-307a of the general  
210 statutes, as amended by section 4 of public act  
211 97-205, is repealed and the following is  
212 substituted in lieu thereof:

213 (a) The weekly compensation rate of each  
214 employee entitled to receive compensation under  
215 section 31-307 as a result of an injury sustained  
216 on or after October 1, 1969, and before July 1,  
217 1993, which totally disables the employee  
218 continuously or intermittently for any period  
219 extending to the following October first or  
220 thereafter, shall be adjusted annually as provided  
221 in this subsection as of the following October  
222 first, and each subsequent October first, to  
223 provide the injured employee with a cost-of-living  
224 adjustment in his weekly compensation rate as  
225 determined as of the date of the injury under  
226 section 31-309. If the maximum weekly compensation  
227 rate as determined under the provisions of section  
228 31-309, to be effective as of any October first  
229 following the date of the injury, is greater than  
230 the maximum weekly compensation rate prevailing as  
231 of the date of the injury, the weekly compensation  
232 rate which the injured employee was entitled to  
233 receive at the date of the injury OR OCTOBER 1,  
234 1990, WHICHEVER IS LATER, shall be increased by  
235 the percentage of the increase in the maximum  
236 weekly compensation rate required by the  
237 provisions of section 31-309 from the date of the  
238 injury OR OCTOBER 1, 1990, WHICHEVER IS LATER, to  
239 such October first. The cost-of-living increases  
240 provided under this subsection shall be paid by  
241 the employer without any order or award from the  
242 commissioner. The adjustments shall apply to each  
243 payment made in the next succeeding twelve-month  
244 period commencing with the October first next  
245 succeeding the date of the injury.

246 (b) The weekly compensation rate of each  
247 employee entitled to receive compensation under  
248 section 31-307 as a result of an injury sustained  
249 prior to October 1, 1969, which has disabled the  
250 employee for a period extending to October 1,  
251 1969, or thereafter shall be adjusted as of  
252 October 1, 1969, and annually thereafter, as  
253 provided in this subsection to provide the injured  
254 employee with a partial cost-of-living adjustment  
255 in his weekly compensation rate. The weekly  
256 compensation rate paid prior to October 1, 1969,  
257 to the injured employee shall be increased as of  
258 October 1, 1969, by the amount that the maximum  
259 weekly compensation rate as determined under  
260 section 31-309 to be effective for injuries

261 sustained on or after October 1, 1969, is greater  
262 than the maximum weekly compensation rate as  
263 determined under section 31-309 to be effective  
264 for injuries sustained on or after October 1,  
265 1965, or the date of the injury, whichever is  
266 later, but not more than fifteen dollars per week.  
267 Thereafter, increases, if any, for cost-of-living  
268 as provided in subsection (a) of this section  
269 shall be added to the amount of weekly  
270 compensation payable as of the date of the injury  
271 [and the initial adjustment provided in this  
272 subsection] OR OCTOBER 1, 1990, WHICHEVER IS  
273 LATER. The partial cost-of-living adjustments  
274 provided under this subsection shall be paid by  
275 the employer without any order or award from the  
276 commissioner. The adjustments shall apply to each  
277 payment made in the next twelve-month period, on  
278 or after October 1, 1969. The cost of the  
279 adjustments shall be paid by the employer or his  
280 insurance carrier who shall be reimbursed therefor  
281 from the Second Injury Fund as provided in section  
282 31-354 upon presentation of any vouchers and  
283 information that the Treasurer shall require.

284 (c) On and after the effective date of [this  
285 act] PUBLIC ACT 97-205, the weekly compensation  
286 rate of each employee entitled to receive  
287 compensation under section 31-307 as a result of  
288 an injury sustained on or after July 1, 1993,  
289 which totally incapacitates the employee  
290 permanently, shall be adjusted as provided in this  
291 subsection as of October 1, 1997, or the October  
292 first following the injury date, whichever is  
293 later, and annually on each subsequent October  
294 first, to provide the injured employee with a  
295 cost-of-living adjustment in his weekly  
296 compensation rate as determined as of the date of  
297 injury under section 31-309. If the maximum weekly  
298 compensation rate, as determined under the  
299 provisions of said section 31-309, to be effective  
300 as of any October first following the date of the  
301 injury, is greater than the maximum weekly  
302 compensation rate prevailing as of the date of  
303 injury, the weekly compensation rate which the  
304 injured employee was entitled to receive as of the  
305 date of injury shall be increased by the  
306 percentage of the increase in the maximum weekly  
307 compensation rate required by the provisions of  
308 said section 31-309 from the date of the injury to

309 such October first. The cost-of-living adjustments  
310 provided under this subdivision shall be paid by  
311 the employer without any order or award from the  
312 commissioner. The adjustments shall apply to each  
313 payment made in the next succeeding twelve-month  
314 period commencing with October 1, 1997, or the  
315 October first next succeeding the date of injury,  
316 whichever is later. With respect to any employee  
317 receiving benefits on October 1, 1997, with  
318 respect to any such injury occurring on or after  
319 July 1, 1993, and before October 1, 1997, or with  
320 respect to any employee who was adjudicated to be  
321 totally incapacitated permanently subsequent to  
322 the date of his injury or is totally incapacitated  
323 permanently due to the fact that the employee has  
324 been totally incapacitated by such an injury for a  
325 period of five years or more, such benefit shall  
326 be recalculated to October 1, 1997, to the date of  
327 such adjudication or to the end of such five-year  
328 period, as the case may be, as if such benefits  
329 had been subject to recalculation annually under  
330 the provisions of this subsection. The difference  
331 between the amount of any benefits which would  
332 have been paid to such employee if such benefits  
333 had been subject to such recalculation and the  
334 actual amount of benefits paid during the period  
335 between such injury and such recalculation shall  
336 be paid to the dependent not later than December  
337 1, 1997, or thirty days after such adjudication or  
338 the end of such period, as the case may be, in a  
339 lump-sum payment. The employer or his insurer  
340 shall be reimbursed by the Second Injury Fund, as  
341 provided in section 31-354, for adjustments,  
342 including lump-sum payments, payable under this  
343 subsection for compensable injuries occurring on  
344 or after July 1, 1993, and before October 1, 1997,  
345 upon presentation of any vouchers and information  
346 that the Treasurer shall require.

347 Sec. 3. Not later than sixty days after the  
348 effective date of this act, the weekly benefit of  
349 any person receiving benefits pursuant to section  
350 31-306 of the general statutes, as amended by this  
351 act, or section 31-307a of the general statutes,  
352 as amended by this act, shall be recalculated to  
353 the effective date of this act as if such benefits  
354 had been subject to recalculation annually  
355 according to the provisions of said sections. Not  
356 later than sixty days after the effective date of

357 this act, any employer, insurer or other party  
358 responsible for providing weekly benefits pursuant  
359 to said sections shall begin providing such  
360 benefits at the recalculated rate. Such  
361 recalculated weekly benefits shall commence at the  
362 beginning of a full week.  
363 Sec. 4. This act shall take effect from its  
364 passage.

365 LAB COMMITTEE VOTE: YEA 7 NAY 3 JFS

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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 SHB 5252**

|                  |  |
|------------------|--|
| STATE IMPACT     | Cost (Second Injury Fund),<br>Indeterminate Cost, see<br>explanation below |
| MUNICIPAL IMPACT | Indeterminate Cost, see<br>explanation below                               |
| STATE AGENCY(S)  | State Treasurer (Second Injury<br>Fund), Various State Agencies            |

EXPLANATION OF ESTIMATES:

STATE AND MUNICIPAL IMPACT: The bill would result in a cost of \$1.1 million in FY 99 and each year thereafter to the Second Injury Fund (SIF) as a result of changing the method of calculating COLA's to SIF claimants or their survivors injured before October 1, 1990. Municipalities as employers pay assessments to SIF either directly, as a self-insurer, or through their insurance carrier. Therefore, it is anticipated there will be an increase in SIF costs to municipalities as a result of changing the method of calculating COLA's for injuries occurring before October 1, 1990. The amount of the increase for municipalities cannot be determined. The State as an employer would also incur additional indeterminate costs. These costs are not anticipated to be significant.

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**OLR BILL ANALYSIS**

sHB 5252

**AN ACT CONCERNING WORKERS' COMPENSATION BENEFITS FOR DEPENDENT SURVIVORS AND TOTALLY DISABLED WORKERS**

**SUMMARY:** This bill increases the annual cost of living adjustments (COLAs) on workers' compensation benefits of dependents of workers who, before October 1, 1990, died of on-the-job injuries or were totally and permanently disabled by work-related injuries. It does so by setting a higher base rate for their COLA calculations. The bill has the effect of restoring benefit levels for these claimants roughly to the level they would have reached had not the COLA calculation method been altered by the Workers' Compensation Review Board in 1995 and the Connecticut Supreme Court in 1997.

The bill requires workers' compensation benefit payers to recalculate weekly benefits for these claimants within 60 days after the bill's effective date. They must begin paying the higher benefits in the first week following the expiration of the 60-day period.

EFFECTIVE DATE: Upon passage

**FURTHER EXPLANATION****COLA Calculation**

Under current law, totally disabled workers and dependent survivors with pre-October 1, 1990 injury dates receive an adjustment in their weekly compensation rate each October 1 calculated as follows. The total percentage change in the maximum weekly workers' compensation rate since October 1, 1990 (26.2% as of October 1, 1997) is multiplied by the base compensation rate the claimant received at the time of the injury. The resulting amount is then added to the rate the claimant received on October 1, 1990 to yield the compensation rate for the current year.

This bill sets the base compensation rate for these claimants at their October 1, 1990 benefit level instead of their original benefit level.

**Examples**

The bill has the biggest effect on the oldest claims with the lowest original compensation rates. For example:

**Worker Killed July 1, 1964.** Assume this worker's widow originally received compensation of \$50 per week. By October 1, 1990, under the COLA laws in effect at the time, the widow's rate would have grown to \$290 per week. By October 1, 1995, her benefit rate would have been \$353. Under the current calculation method, this widow's benefit has dropped to \$303 per week or \$50 per week less than her 1995 rate ( $(\$50 \times 26.2\%) + \$290$ ). Under the bill, her rate would be \$366 per week ( $(\$290 \times 26.2\%) + \$290$ ), an increase of \$63 per week.

**Worker Killed July 1, 1985.** Assume this worker's widow originally received \$300 per week. By October 1, 1990, this amount would have grown to \$398 per week. On October 1, 1995, it would have reached \$485. Under the current calculation method, on October 1, 1997, this widow would receive \$477 per week or \$8 a week less than she did in 1995 ( $(\$300 \times 26.2\%) + \$398$ ). Under the bill, she would receive \$503 ( $(\$398 \times 26.2\%) + \$398$ ), an increase of \$26 per week.

**COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable Substitute  
Yea 7      Nay 3