

June 29, 1971

LEGISLATIVE HISTORY OF R.S.34:15-12 (2) (23)
 (Schedule of payments; permanent partial disability - hernia)

COPY 1

- L.1911 - chap.95 - S-27.
 Original workman's compensation - no mention of hernia in schedule of compensation.
- Amended by the following laws:
- L.1913 - chap.174 - S-125.
 Amends 34:15-12 but no mention of hernia.
- L.1919 - chap93 - S-10.
 This is the first specific mention of hernia in the schedule of compensation.
 January 20 - Introduced by Senator Hammond.
 March 3 - Committee substitute for S-10 and S-12 (both workmen's compensation bills introduced by Senator Hammond) was reported out of committee. A Second Committee Substitute for S-10 and S-12 was read and adopted.
 March 12 - Amended by Senate.
 March 17 - Amended and passed by Senate.
 March 31 - Amended and passed by Assembly.
 April 11 - Approved, chapter 93.
 (Copy enclosed of pertinent section of this act)
 Amended during passage but this section was not affected.
- The State Library does not have all forms of S-10, S-12 and the Committee Substitute for them. We found statements on S-10 and on the Assembly Amendments to the Second Committee Substitute. Neither statement is pertinent to the section on compensation for hernia.
- L.1923 - chap.49
 Amends 34:15-12 but no substantive change in the section pertaining to hernia.
- L.1928 - chap.135
 Amends 34:15-12 but no substantive change in the section pertaining to hernia.
- L.1931 - chap.279 - S-298.
 March 16 - Introduced by Reeves.
 April 15 - Passed Senate.
 April 21 - Passed Assembly.
 April 27 - Approved, chapter 279.
 Not amended during passage. Statement on the bill (copy enclosed of original bill with statement).

DEPOSITORY COPY

Do Not Remove From Library

- L.1939 - chap.287
Amends 34:15-12 but no substantive change to section involving hernia.
- L.1942 - chap.97
Deletes a provision limiting to \$150 the amount of expense of a hernia operation to be met by the employer. No other substantive change to this section.
- L.1945 - chap.74
Substituted the words "preponderant proof" for "conclusive proof" in former provision relating to hernia (subparagraph 23) which required preponderant proof that hernia was caused by sudden effort or severe strain. No other substantive change to this section.
- L.1950 - chap.175 - A-99.
Complete revision of section pertaining to hernia.
February 6 - Introduced by A.M. Smith.
April 12 - Passed Assembly, amended.
May 17 - Passed Senate, amended.
May 17 - Senate amended. Passed Assembly.
June 2 - Approved, chapter 175.
Statement on the bill does not pertain to paragraph relating to hernia.
Amended during passage. A-99 as introduced made no change in paragraph relating to hernia. Senate amendment of May 17, 1950 replaced entire paragraph.
- L.1951 - chap.105
Amended 34:15-12 but no change in section dealing with hernia.
- L.1956 - chap.141.
Amended 34:15-12 but no change in section dealing with hernia.
- L.1962 - chap.57
Amended 34:15-12 but no change in section dealing with hernia.
- L.1966 - chap.126
Amended 34:15-12 but no change in section dealing with hernia.

Hearings and Reports.

There are numerous reports in the area of workmen's compensation. The only ones consulted for the purpose of this legislative history are those reports made in or near the years (1919, 1931, 1950) in which there was a substantial change in the section under consideration here - i.e. subparagraph 23 - hernia. The reports consulted are listed below.

974.90 New Jersey. Employers' liability commission.
E55
1916 Report...1915.

974.90 Nelson, Harry A.
E55 Report of study of N.J. Workmen's Compensation
1951 Act...

974.90 N.J. Workmen's Compensation Advisory Commission.
E55
1931 Report to the Commissioner of Labor...

Note: This report recommended the amendment made by Laws 1931, chap.279.

Note: There is a New Jersey Workmen's Compensation Law Study Commission which was created by Laws 1966, chapter 126. This commission held hearings and issued reports in 1968. The report listed below contains suggested changes in the workmen's compensation law. The subparagraph 23 (hernia) remains unchanged.

974.90 N.J. Workmen's Compensation Law Study Commission.
E55
1968 Report... July 1968.

(GC - Not searched - years in question are not yet indexed)

JH/EH
Encl.

weeks. For the total loss of hearing in both ears by one accident, sixty-six and two-thirds per centum of daily wages during one hundred and sixty weeks.

Both hands,
feet, etc.

(v) The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or any two thereof as a result of any one accident, shall constitute total and permanent disability, to be compensated according to the provisions of clause (b).

In other cases.

(w) In all lesser or other cases involving permanent loss, or where the usefulness of a member or any physical function is permanently impaired, the compensation shall be sixty-six and two-thirds per centum of daily wages, and the duration of compensation shall bear such relation to the specific periods of time stated in the above schedule as the disabilities bear to those produced by the injuries named in the schedule. Should the employer and employee be unable to agree upon the amount of compensation to be paid in cases not covered by the schedule, either party may appeal to the Workmen's Compensation Bureau for a settlement of the controversy.

Right of
appeal in
disagreement.

Hernia.

(x) Hernia is a disease which ordinarily develops gradually, being very rarely the result of an accident. Where there is real traumatic hernia resulting from the application of force directly to the abdominal wall, either puncturing or tearing the wall, compensation will be allowed. All other cases will be considered as either congenital or of slow development and not compensable, being a disease rather than an accidental injury; unless conclusive proof is offered that the hernia was immediately caused by such sudden effort or severe strain that, first, the descent of the hernia immediately followed the cause; second, that there was severe pain in the hernial region; third, that there was such prostration that the employee was compelled to cease work immediately; fourth, that the above facts were of such severity that the same was noticed by the claimant and communicated to the employer within twenty-four hours after the occurrence of the hernia; fifth, that there was such physical distress that the attendance of a licensed physician was required within twenty-four hours after the occurrence of the hernia. In the case of hernia, as

above defined, the provisions of paragraphs thirteen, fourteen and eleven (a) shall apply, until such time as the employee is able to resume some kind of work with the aid of a truss or other mechanical appliance. If the employee refuses to permit of an operation, the employer shall meet the requirements above specified, pay the reasonable costs of the truss or other appliance found necessary, and also pay compensation for twenty weeks, following which his obligation shall cease and terminate, unless death results from the hernia, in which case the provisions of paragraph twelve shall apply. However, if the employee shall elect to undergo an operation, by a physician selected by the employer, the employer shall meet all the expense incident to such operation and recovery, not in excess of one hundred and fifty dollars, together with compensation as provided in paragraph eleven (a) during the periods of disability prior to and following the operation, subject to the provisions of paragraph thirteen. If the employee refuses the services of the physician selected by the employer, preferring one of his own selection, the employer shall be relieved of obligations concerning medical expense due to the operation and recovery, but shall pay compensation during the prior and resulting periods of disability. If death results from the hernia or operation, the provisions of paragraph twelve shall apply.

(y) The weekly compensation payments specified in paragraph eleven, are all subject to the same limitations as to maximum and minimum as are stated in clause (a) hereof.

As to weekly compensation.

(z) In case of the death of a person from any cause other than the accident, during the period of payments for permanent injury, the remaining payments shall be paid to such of his or her dependents as are included in the provisions of paragraph twelve of this act, or, if no dependents, the remaining amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to the proper person for funeral expenses.

Payments when death results from other causes.

Paragraph twelve of the said act is hereby amended to read as follows:

Section 12 amended.

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1931

BY MR. BISHOP

Referred to Committee on Judiciary

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

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

1 1. Paragraph eleven (x) of the act referred to in the title of this act is hereby
2 amended to read as follows:

3 (x) Inguinal Hernia is a disease which ordinarily develops gradually, being
4 very rarely the result of an accident. Where there is real traumatic hernia resulting
5 from the application of force directly to the abdominal wall, either puncturing or
6 tearing the wall, compensation will be allowed. All other cases will be considered
7 as either congenital or slow development and not compensable, being a disease rather
8 than an accidental injury; unless conclusive proof is offered that the hernia was
9 immediately caused by such sudden effort or severe strain that, first the descent of
10 the hernia immediately followed the cause; second, that there was severe pain in
11 the hernial region; third, that there was such prostration that the employee was
12 compelled to cease work immediately; fourth, that the above facts were of such
13 severity that the same was noticed by the claimant and communicated to the employer
14 within twenty-four hours after the occurrence of the hernia, and days when the
15 business is not in operation, such as Sundays, Saturdays or holidays, shall be
16 excluded from this twenty-four hour period; fifth, that there was such physical

17 distress that the attendance of a licensed physician was required within twenty-
 18 four hours after the occurrence of the hernia. In the case of hernia as above defined,
 19 the provisions of paragraph thirteen, fourteen and eleven (a) shall apply, until
 20 such time as the employee is able to resume some kind of work with the aid of a
 21 truss or other mechanical appliance. If the employee refuses to permit of an opera-
 22 tion, the employer shall meet the requirements above specified, pay the reasonable
 23 costs of the truss or other appliance found necessary, and also pay compensation
 24 for twenty weeks, following which the obligation shall cease and terminate, unless
 25 death results from the hernia, in which case the provisions of paragraph twelve shall
 26 apply. However, if the employee shall elect to undergo an operation, by a physician
 27 selected by the employer, the employer shall meet all the expenses incident to such
 28 operation and recovery, not in excess of one hundred and fifty dollars, together
 29 with compensation as provided in paragraph eleven (a) during the period of dis-
 30 ability prior to and following the operation, subject to the provisions of paragraph
 31 thirteen. If the employee refuses the services of the physician selected by the
 32 employer, preferring one of his own selection, the employer shall be relieved
 33 obligations concerning medical expense due to the operation and recovery, but shall
 34 pay compensation during the prior and resulting periods of disability. If death
 35 results from the hernia or operation, the provisions of paragraph twelve shall apply.

1 2. Paragraph twenty-one (f) is hereby amended to read as follows:

2 (f) An agreement [or award of] for compensation may be modified at any
 3 time by a subsequent agreement, or a formal award reviewed within two years
 4 from the date when the injured person last received a payment, upon the application
 5 of either party on the ground that the incapacity of the injured employee has
 6 subsequently increased, or reviewed at any time on the ground that the disability has
 7 diminished. In such case the provisions of paragraph seventeen with reference to
 8 medical examination shall apply.

1 3. Paragraph twenty-three (f) is hereby amended to read as follows:

2 (f) Where a third person or corporation is liable to the employee or his
 3 dependents for an injury or death, the existence of a right of compensation
 4 from the employer under this statute shall not operate as a bar to the action of
 5 the employee or his dependents, nor be regarded as establishing a measure of
 6 damage therein. However, in event that the employee or his dependents shall

7 recover from the said third person or corporation, a sum equivalent to or greater
8 than the total compensation payments for which the employer is liable under this
9 statute, the employer shall be released thereby from the obligation of compensation.
10 If, however, the sum so recovered from the third person or corporation is less
11 than the total of compensation payments, the employer shall be liable only for the
12 difference. The obligation of the employer under this statute to make compensa-
13 tion shall continue until the payment, if any, by such third person or corporation
14 is made. Such employer shall file with the third person or corporation so liable,
15 at any time prior to payment, a statement of the compensation agreement or
16 award between himself and his employee, or the dependents of the employee, and
17 the employer shall thereafter be entitled to receive from such third person or cor-
18 poration, upon the payment of any amount in release or in judgment by the third
19 person or corporation on account of his or its liability to the injured employee or
20 his dependents, a sum equivalent to the medical expenses incurred and the amount
21 of compensation payments which the employer has heretofore paid to the injured
22 employee or his dependents, which payments shall be deducted by the third persons
23 or corporation from the sum paid in release or judgment to the injured employee
24 or his dependents.

25 When an injured employee or his dependent fails within six months of the
26 accident, to take legal action against a third party responsible for the injury, or
27 accepts a settlement for less than the compensation obligation of the employer, the
28 employer or his insurance carrier is hereby authorized to proceed legally against
29 such third party; provided, however, if the amount secured by the employer or
30 carrier is in excess of the employer's obligation and the expense of suit, the balance
31 shall be paid to the employee or the dependent.

1 4. Paragraph twenty-three (g) is hereby amended to read as follows:

2 (g) Whenever in section two of this act the term "wages" is used it shall
3 be construed to mean the money rate at which the service rendered is recom-
4 pensed under the contract of hiring in force at the time of the accident, and
5 shall not include gratuities received from the employer or others. Board and
6 lodging when furnished by the employer as part of the wages shall be included
7 and valued at five dollars per week, unless the money value of such advantages

5298

8 shall have been otherwise fixed by the parties at the time of hiring. Where prior
 9 to the accident, the rate of wages is fixed by the output of the employee, the
 10 daily wage shall be calculated by dividing the number of days the workman was
 11 actually employed into the total amount the employee earned during the preced-
 12 ing six months, or so much thereof as shall refer to employment by the same
 13 employer. Where the rate of wages is fixed by the hour, the daily wage shall be
 14 found by multiplying the hourly rate by the customary number of working hours
 15 constituting an ordinary day in the character of the work involved. In any case
 16 the weekly wage shall be found by multiplying the daily wage by five [and one-
 17 half] or if the employee worked a greater proportion of the week regularly, then
 18 by five and one-half, six, six and one-half or seven, according to the customary
 19 number of working days constituting an ordinary week in the character of work
 20 involved. Five days shall constitute a minimum week.

1 5. Paragraph twenty-three (h) is hereby amended to read as follows:
 2 (h) In case of personal injury or death all claims for compensation on
 3 account thereof shall be forever barred unless a petition is filed in duplicate with
 4 the secretary of the Workmen's Compensation Bureau, at the State House, in
 5 Trenton, as prescribed in paragraph five of the supplement to this act, approved
 6 February twenty-eight, one thousand nine hundred and eighteen, as Chapter one
 7 hundred and forty-nine, as later amended. [within one year after the date on which
 8 the accident occurred, or in case an agreement of compensation has been made
 9 between such employer and such claimant, then within one year after the failure
 10 of the employer to make payment pursuant to the terms of such agreement; or
 11 in case a part of the compensation has been paid by such employer, then within
 12 one year after the last payment of compensation.]

1 6. This act shall take effect immediately.

STATEMENT

The purpose of these amendments is as follows:

- To protect an employee with respect to giving notice of a hernia when the plant may be shut down.
- To clarify and make certain when a claim may be reopened.
- To define more certainly the minimum compensation week.

SENATE, No. 55

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1942

By Mr. FARLEY

Referred to Committee on Labor, Industries and Social Welfare

AN ACT concerning workmen's compensation, and amending section 34:15-12 of the Revised Statutes.

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

1 1. Section 34:15-12 of the Revised Statutes is amended to read as follows:

2 34:15-12. Following is a schedule of compensation:

3 a. For injury producing temporary disability, sixty-six and two-thirds
4 per centum (66 $\frac{2}{3}$ %) of the wages received at the time of the injury, subject
5 to a maximum compensation of twenty dollars (\$20.00) per week and a
6 minimum of ten dollars (\$10.00) per week; if at the time of the injury the
7 employee receives wages of less than ten dollars (\$10.00) per week, then he
8 shall receive the full amount of such wages per week. This compensation
9 shall be paid during the period of such disability, not, however, beyond three
10 hundred weeks.

11 b. For disability total in character and permanent in quality, sixty-six
12 and two-thirds per centum (66 $\frac{2}{3}$ %) of the wages received at the time of
13 injury, subject to a maximum compensation of twenty dollars (\$20.00) per
14 week and a minimum of ten dollars (\$10.00) per week; if at the time of
15 injury the employee received wages of less than ten dollars (\$10.00) per
16 week then he shall receive the full amount of wages per week. This compensa-
17 tion shall be paid for a period of four hundred weeks, at which time com-

18 pension payments shall cease unless the employee shall have submitted to
19 such physical or educational rehabilitation as may have been ordered by the
20 rehabilitation commission, and can show that because of such disability it is
21 impossible for him to obtain wages or earnings equal to those earned at
22 the time of the accident, in which case further weekly payments shall be
23 made during the period of such disability, the amount thereof to be the
24 previous weekly compensation payment diminished by that portion thereof
25 that the wage, or earnings, he is then able to earn, bears to the wages
26 received at the time of the accident. In calculating compensation for this
27 extension beyond four hundred weeks the minimum provision of ten dollars
28 (\$10.00) shall not apply. This extension of compensation payments beyond
29 four hundred weeks shall be subject to such periodic reconsiderations and
30 extensions as the case may require, and shall apply only to disability total in
31 character and permanent in quality, and shall not apply to any accident
32 occurring prior to July fourth, one thousand nine hundred and twenty-three.

33 c. For disability partial in character, but permanent in quality, the com-
34 pensation shall be based upon the extent of such disability. In cases included
35 in the following schedule the compensation shall be that named in the
36 schedule, to wit:

37 d. For the loss of the thumb, sixty-six and two-thirds per centum
38 ($66\frac{2}{3}\%$) of daily wages during sixty-five weeks.

39 e. For the loss of the first finger, commonly called index finger, sixty-
40 six and two-thirds per centum ($66\frac{2}{3}\%$) of daily wages during forty weeks.

41 f. For the loss of a second finger, sixty-six and two-thirds per centum
42 ($66\frac{2}{3}\%$) of daily wages during thirty weeks.

43 g. For the loss of a third finger, sixty-six and two-thirds per centum
44 ($66\frac{2}{3}\%$) of daily wages during twenty weeks.

45 h. For the loss of a fourth finger, commonly called little finger, sixty-
46 six and two-thirds per centum ($66\frac{2}{3}\%$) of daily wages during fifteen weeks.

47 i. The loss of the first phalange of the thumb or of any finger shall be
48 considered to be equal to the loss of one-half of such thumb or finger, and

49 the compensation shall be for one-half of the periods of time above specified.

50 The loss of any portion of the thumb or any finger between the terminal
51 joint and the end thereof shall be compensated for a like proportion of the
52 period of time prescribed for the loss of the first phalange of such member.

53 j. The loss of the first phalange and any portion of the second shall be
54 considered as the loss of the entire finger or thumb, but in no case shall the
55 amount received for more than one finger exceed the amount provided in this
56 schedule for the loss of a hand.

57 k. For the loss of a great toe, sixty-six and two-thirds per centum
58 (66 2/3%) of daily wages during thirty weeks.

59 l. For the loss of one of the toes other than a great toe, sixty-six and
60 two-thirds per centum (66 2/3%) of daily wages during ten weeks.

61 m. The loss of the first phalange of any toe shall be considered to be
62 equal to the loss of one-half of such toe, and compensation shall be for one-
63 half of the period of time above specified.

64 n. The loss of the first phalange and any portion of the second shall be
65 considered as the loss of the entire toe.

66 o. For the loss of a hand, sixty-six and two-thirds per centum (66 2/3%)
67 of the daily wages during one hundred [and] seventy-five weeks.

68 p. For the loss of an arm, sixty-six and two-thirds per centum (66 2/3%)
69 of daily wages during two hundred thirty weeks.

70 q. For the loss of a foot, sixty-six and two-thirds per centum (66 2/3%)
71 of daily wages during one hundred twenty-five weeks.

72 r. For the loss of a leg, sixty-six and two-thirds per centum (66 2/3%)
73 of daily wages during one hundred [and] seventy-five weeks.

74 s. For the loss of an eye, sixty-six and two-thirds per centum (66 2/3%)
75 of daily wages during one hundred weeks.

76 t. For the loss of a natural tooth, sixty-six and two-thirds per centum
77 (66 2/3%) of daily wages for four weeks for each tooth lost.

78 u. For the total loss of hearing in one ear, sixty-six and two-thirds per
79 centum (66 2/3%) of daily wages during forty weeks. For the total loss of

80 hearing in both ears by one accident, sixty-six and two-thirds per centum
81 (66 2/3%) of daily wages during one hundred sixty weeks.

82 v. The loss of both hands, or both arms, or both feet, or both legs, or
83 both eyes, or any two thereof as a result of any one accident, shall constitute
84 total and permanent disability to be compensated according to the provi-
85 sions of paragraph "b."

86 vv. Amputation between the elbow and the wrist shall be considered as
87 the equivalent of the loss of a hand and amputation at the elbow shall be
88 considered equivalent to the loss of the arm. Amputation between the knee
89 and the ankle shall be considered as the equivalent of the loss of a foot, and
90 amputation at the knee shall be considered equivalent to the loss of the leg.

91 w. In all lesser or other cases involving permanent loss, or where the
92 usefulness of a member or any physical function is permanently impaired, the
93 compensation shall be sixty-six and two-thirds per centum (66 2/3%) of
94 daily wages, and the duration of compensation shall bear such relation to the
95 specific periods of time stated in the above schedule as the disabilities bear
96 to those produced by the injuries named in the schedule. In cases in which
97 the disability is determined as a percentage of total and permanent disability
98 the duration of the compensation shall be a corresponding portion of five
99 hundred weeks. Should the employer and employee be unable to agree upon
100 the amount of compensation to be paid in cases not covered by the schedule,
101 either party may appeal to the workmen's compensation bureau for a settle-
102 ment of the controversy.

103 x. Inguinal hernia is a disease which ordinarily develops gradually,
104 being very rarely the result of an accident. Where there is a real traumatic
105 hernia resulting from the application of force directly to the abdominal
106 wall, either puncturing or tearing the wall, compensation will be allowed.
107 All other cases will be considered as either congenital or of slow develop-
108 ment and not compensable, being a disease rather than an accidental injury;
109 unless conclusive proof is offered that the hernia was immediately caused by
110 such sudden effort or severe strain that, first, the descent of the hernia

111 immediately followed the cause; second, that there was severe pain in the
112 hernial region; third, that there was such prostration that the employee was
113 compelled to cease work immediately; fourth, that the above facts were of
114 such severity that the same was noticed by the claimant and communicated
115 to the employer within twenty-four hours after the occurrence of the hernia
116 (days when the business is not in operation, such as Sundays, Saturdays or
117 holidays shall be excluded from this twenty-four-hour period); fifth, that
118 there was such physical distress that the attendance of a licensed physician
119 was required within twenty-four hours after the occurrence of the hernia. In
120 the case of hernia as above defined, the provisions of paragraph "a" of this
121 section and sections 34:15-14 and 34:15-15 of this Title shall apply, until
122 such time as the employee is able to resume some kind of work with the aid
123 of a truss or other mechanical appliance. If the employee refuses to permit
124 of an operation the employer shall meet the requirements above specified, pay
125 the reasonable costs of the truss or other appliance found necessary, and also
126 pay compensation for twenty weeks, following which the obligation shall
127 cease and terminate, unless death results from the hernia, in which case the
128 provisions of section 34:15-13 of this Title shall apply. However, if the
129 employee shall elect to undergo an operation, by a physician selected by the
130 employer, the employer shall meet all the expense incident to such operation
131 and recovery [not in excess of one hundred fifty dollars (\$150.00),] together
132 with compensation as provided in paragraph "a" of this section during the
133 periods of disability prior to and following the operation, subject to the
134 provisions of said section 34:15-14. If the employee refuses the services of
135 the physician selected by the employer, preferring one of his own selection,
136 the employer shall be relieved of obligations concerning medical expense due
137 to the operation and recovery, but shall pay compensation during the prior
138 and resulting periods of disability. If death results from the hernia or
139 operation, the provisions of said section 34:15-13 shall apply.

140 y. The weekly compensation payments specified in this section are all
141 subject to the same limitation as to **maximum** and **minimum** as are stated in
142 paragraph "a" hereof.

143 z. In case of the death of the person from any cause other than the
 144 accident, during the period of payments for permanent injury, the remain-
 145 ing payments shall be paid to such of his or her dependents as are included in
 146 the provisions of said section 34:15-13 or, if no dependents, the remaining
 147 amount due, but not exceeding one hundred [and] fifty dollars (\$150.00), shall
 148 be paid in a lump sum to the proper person for funeral expenses; but no com-
 149 pensation shall be due any other person than the injured employee on
 150 account of compensation being paid in excess of four hundred weeks on
 151 account of disability total in character and permanent in quality as provided
 152 by paragraph "b" of this section.

1 2. This act shall take effect immediately.

STATEMENT

The purpose of this act is to do away with the arbitrary amount of money
 and substitute the old rule of reasonable compensation.

[OFFICIAL COPY REPRINT]

SENATE, No. 55

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1942

By Mr. FARLEY

Referred to Committee on Labor, Industries and Social Welfare

AN ACT concerning workmen's compensation, and amending section 34:15-12 of
the Revised Statutes.

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

1 1. Section 34:15-12 of the Revised Statutes is amended to read as follows:
2 34:15-12. Following is a schedule of compensation:

3 a. For injury producing temporary disability, sixty-six and two-thirds
4 per centum (66 2/3%) of the wages received at the time of the injury, subject
5 to a maximum compensation of twenty dollars (\$20.00) per week and a
6 minimum of ten dollars (\$10.00) per week; if at the time of the injury the
7 employee receives wages of less than ten dollars (\$10.00) per week, then he
8 shall receive the full amount of such wages per week. This compensation
9 shall be paid during the period of such disability, not, however, beyond three
10 hundred weeks.

11 b. For disability total in character and permanent in quality, sixty-six
12 and two-thirds per centum (66 2/3%) of the wages received at the time of
13 injury, subject to a maximum compensation of twenty dollars (\$20.00) per
14 week and a minimum of ten dollars (\$10.00) per week; if at the time of
15 injury the employee received wages of less than ten dollars (\$10.00) per
16 week then he shall receive the full amount of wages per week. This compensa-
17 tion shall be paid for a period of four hundred weeks, at which time com-

18 pension payments shall cease unless the employee shall have submitted to
19 such physical or educational rehabilitation as may have been ordered by the
20 rehabilitation commission, and can show that because of such disability it is
21 impossible for him to obtain wages or earnings equal to those earned at
22 the time of the accident, in which case further weekly payments shall be
23 made during the period of such disability, the amount thereof to be the
24 previous weekly compensation payment diminished by that portion thereof
25 that the wage, or earnings, he is then able to earn, bears to the wages
26 received at the time of the accident. In calculating compensation for this
27 extension beyond four hundred weeks the minimum provision of ten dollars
28 (\$10.00) shall not apply. This extension of compensation payments beyond
29 four hundred weeks shall be subject to such periodic reconsiderations and
30 extensions as the case may require, and shall apply only to disability total in
31 character and permanent in quality, and shall not apply to any accident
32 occurring prior to July fourth, one thousand nine hundred and twenty-three.

33 c. For disability partial in character, but permanent in quality, the com-
34 pensation shall be based upon the extent of such disability. In cases included
35 in the following schedule the compensation shall be that named in the
36 schedule, to wit:

37 d. For the loss of the thumb, sixty-six and two-thirds per centum
38 (66 2/3%) of daily wages during sixty-five weeks.

39 e. For the loss of the first finger, commonly called index finger, sixty-
40 six and two-thirds per centum (66 2/3%) of daily wages during forty weeks.

41 f. For the loss of a second finger, sixty-six and two-thirds per centum
42 (66 2/3%) of daily wages during thirty weeks.

43 g. For the loss of a third finger, sixty-six and two-thirds per centum
44 (66 2/3%) of daily wages during twenty weeks.

45 h. For the loss of a fourth finger, commonly called little finger, sixty-
46 six and two-thirds per centum (66 2/3%) of daily wages during fifteen weeks.

47 i. The loss of the first phalange of the thumb or of any finger shall be
48 considered to be equal to the loss of one-half of such thumb or finger, and

49 the compensation shall be for one-half of the periods of time above specified.
50 The loss of any portion of the thumb or any finger between the terminal
51 joint and the end thereof shall be compensated for a like proportion of the
52 period of time prescribed for the loss of the first phalange of such member.

53 j. The loss of the first phalange and any portion of the second shall be
54 considered as the loss of the entire finger or thumb, but in no case shall the
55 amount received for more than one finger exceed the amount provided in this
56 schedule for the loss of a hand.

57 k. For the loss of a great toe, sixty-six and two-thirds per centum
58 (66 2/3%) of daily wages during thirty weeks.

59 l. For the loss of one of the toes other than a great toe, sixty-six and
60 two-thirds per centum (66 2/3%) of daily wages during ten weeks.

61 m. The loss of the first phalange of any toe shall be considered to be
62 equal to the loss of one-half of such toe, and compensation shall be for one-
63 half of the period of time above specified.

64 n. The loss of the first phalange and any portion of the second shall be
65 considered as the loss of the entire toe.

66 o. For the loss of a hand, sixty-six and two-thirds per centum (66 2/3%)
67 of the daily wages during one hundred seventy-five weeks.

68 p. For the loss of an arm, sixty-six and two-thirds per centum (66 2/3%)
69 of daily wages during two hundred thirty weeks.

70 q. For the loss of a foot, sixty-six and two-thirds per centum (66 2/3%)
71 of daily wages during one hundred twenty-five weeks.

72 r. For the loss of a leg, sixty-six and two-thirds per centum (66 2/3%)
73 of daily wages during one hundred seventy-five weeks.

74 s. For the loss of an eye, sixty-six and two-thirds per centum (66 2/3%)
75 of daily wages during one hundred weeks.

76 t. For the loss of a natural tooth, sixty-six and two-thirds per centum
77 (66 2/3%) of daily wages for four weeks for each tooth lost.

78 u. For the total loss of hearing in one ear, sixty-six and two-thirds per
79 centum (66 2/3%) of daily wages during forty weeks. For the total loss of

80 hearing in both ears by one accident, sixty-six and two-thirds per centum
81 (66 2/3%) of daily wages during one hundred sixty weeks.

82 v. The loss of both hands, or both arms, or both feet, or both legs, or
83 both eyes, or any two thereof as a result of any one accident, shall constitute
84 total and permanent disability to be compensated according to the provi-
85 sions of paragraph "b."

86 vv. Amputation between the elbow and the wrist shall be considered as
87 the equivalent of the loss of a hand and amputation at the elbow shall be
88 considered equivalent to the loss of the arm. Amputation between the knee
89 and the ankle shall be considered as the equivalent of the loss of a foot, and
90 amputation at the knee shall be considered equivalent to the loss of the leg.

91 w. In all lesser or other cases involving permanent loss, or where the
92 usefulness of a member or any physical function is permanently impaired, the
93 compensation shall be sixty-six and two-thirds per centum (66 2/3%) of
94 daily wages, and the duration of compensation shall bear such relation to the
95 specific periods of time stated in the above schedule as the disabilities bear
96 to those produced by the injuries named in the schedule. In cases in which
97 the disability is determined as a percentage of total and permanent disability
98 the duration of the compensation shall be a corresponding portion of five
99 hundred weeks. Should the employer and employee be unable to agree upon
100 the amount of compensation to be paid in cases not covered by the schedule,
101 either party may appeal to the workmen's compensation bureau for a settle-
102 ment of the controversy.

103 x. Inguinal hernia is a disease which ordinarily develops gradually,
104 being very rarely the result of an accident. Where there is a real traumatic
105 hernia resulting from the application of force directly to the abdominal
106 wall, either puncturing or tearing the wall, compensation will be allowed.
107 All other cases will be considered as either congenital or of slow develop-
108 ment and not compensable, being a disease rather than an accidental injury;
109 unless conclusive proof is offered that the hernia was immediately caused by
110 such sudden effort or severe strain that, first, the descent of the hernia

111 immediately followed the cause; second, that there was severe pain in the
112 hernial region; third, that there was such prostration that the employee was
113 compelled to cease work immediately; fourth, that the above facts were of
114 such severity that the same was noticed by the claimant and communicated
115 to the employer within twenty-four hours after the occurrence of the hernia
116 (days when the business is not in operation, such as Sundays, Saturdays or
117 holidays shall be excluded from this twenty-four-hour period); fifth, that
118 there was such physical distress that the attendance of a licensed physician
119 was required within twenty-four hours after the occurrence of the hernia. In
120 the case of hernia as above defined, the provisions of paragraph "a" of this
121 section and sections 34:15-14 and 34:15-15 of this Title shall apply, until
122 such time as the employee is able to resume some kind of work with the aid
123 of a truss or other mechanical appliance. If the employee refuses to permit
124 of an operation the employer shall meet the requirements above specified, pay
125 the reasonable costs of the truss or other appliance found necessary, and also
126 pay compensation for twenty weeks, following which the obligation shall
127 cease and terminate, unless death results from the hernia, in which case the
128 provisions of section 34:15-13 of this Title shall apply. However, if the
129 employee shall elect to undergo an operation, by a physician selected by the
130 employer, the employer shall meet all the expense incident to such operation
131 and recovery together with compensation as provided in paragraph "a" of
132 this section during the periods of disability prior to and following the opera-
133 tion, subject to the provisions of said section 34:15-14. If the employee re-
134 fuses the services of the physician selected by the employer, preferring one of
135 his own selection, the employer shall be relieved of obligations concerning
136 medical expense due to the operation and recovery, but shall pay compensa-
137 tion during the prior and resulting periods of disability. If death results
138 from the hernia or operation, the provisions of said section 34:15-13 shall
139 apply.

140 y. The weekly compensation payments specified in this section are all
141 subject to the same limitation as to maximum and minimum as are stated in
142 paragraph "a" hereof.

143 z. In case of the death of the person from any cause other than the
144 accident, during the period of payments for permanent injury, the remain-
145 ing payments shall be paid to such of his or her dependents as are included in
146 the provisions of said section 34:15-13 or, if no dependents, the remaining
147 amount due, but not exceeding one hundred fifty dollars (\$150.00), shall
148 be paid in a lump sum to the proper person for funeral expenses; but no com-
149 pensation shall be due any other person than the injured employee on
150 account of compensation being paid in excess of four hundred weeks on
151 account of disability total in character and permanent in quality as provided
152 by paragraph "b" of this section.

1 2. This act shall take effect immediately.

LEGISLATIVE HISTORY OF R.S. 34:15-40
(Liability of Third Party)

L.1931 - C279 - S298

Statement on bill (copy enclosed)
Not amended during passage

L.1936 - C162 - A178

Statement on bill (original enclosed)
Committee Substitute adopted (enclosed)
Amended during passage
Assembly Minutes, p.715 (enclosed)

L.1951 - C169 - S231

No statement on bill
Not amended during passage

L.1956 - C141 - A585

Statement on bill (enclosed)
Amended during passage (p.12-16 of original bill enclosed and
Senate Committee amendments enclosed)

For background see:

J331.8 Workmen's compensation (the New Jersey experience),
B51 by Monroe Berkowitz.

J331.825 Three years under New Jersey workmen's compensation
A512 law, by the American Association for Labor
Legislation Social Insurance Committee.

Hearings and reports:

This is a selective list of those reports which appear to be related to these laws and were presented close to the time of time of enactment. For additional reports and information on workmen's compensation see the card catalog under New Jersey - Workmen's Compensation.

974.90 Report to the Commissioner of Labor...
E55 New Jersey Workmen's Compensation advisory commission.
1931

974.90 Report...April, 1935
E55 N.J. Joint commission to study workmen's compensation
1935 act and practices.

974.90 Report...April 12,
E55 N.J. Joint commission to study workmen's compensation
1935b act and practices.

974.90 Report of study of New Jersey Workmen's Compensation Act
E55 with recommendation.
1951 Nelson, Harry A.

[FOURTH OFFICIAL COPY REPRESENT.]
SECOND COMMITTEE SUBSTITUTE FOR
SENATE Nos. 10 and 12

(P. L. 1911, Chap. 95, p. 134.)

STATE OF NEW JERSEY

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

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

1 1. Paragraph eleven of the act referred to in the title of this act is hereby
2 amended to read as follows:

3 11. Following is a schedule of compensation:

4 (a) For injury producing temporary disability sixty-six and two-thirds
5 per centum of the wages received at the time of the injury, subject to a
6 maximum compensation of twelve dollars per week and a minimum of
7 six dollars per week; *provided*, that if at the time of the injury the em-
8 ployee receives wages of less than six dollars per week, then he shall re-
9 ceive the full amount of such wages per week. This compensation shall be paid
10 during the period of such disability, not, however, beyond three hundred weeks.

11 (b) For disability total in character and permanent in quality, sixty-
12 six and two-thirds per centum of the wages received at the time of injury, subject
13 to a maximum compensation of twelve dollars per week and a minimum of
14 six dollars per week; *provided*, that if at the time of injury the employee

15 receives wages of less than six dollars per week, then he shall receive the
16 full amount of wages per week. This compensation shall be paid during the period
17 of such disability, not, however, beyond four hundred weeks.

18 (c) For disability partial in character, but permanent in quality, the compen-
19 sation shall be based upon the extent of such disability. In cases included in the
20 following schedule the compensation shall be that named in the schedule, to wit:

21 (d) For the loss of the thumb, sixty-six and two-thirds per centum of
22 daily wages during sixty weeks.

23 (e) For the loss of the first finger, commonly called index finger, sixty-six
24 and two thirds per centum of daily wages during thirty-five weeks.

25 (f) For the loss of a second finger, sixty-six and two-thirds per centum of
26 daily wages during thirty weeks.

27 (g) For the loss of a third finger, sixty-six and two-thirds per cen-
28 tum of daily wages during twenty weeks.

29 (h) For the loss of a fourth finger, commonly called little finger, sixty-six
30 and two-thirds per centum of daily wages during fifteen weeks.

31 (i) The loss of the first phalange of the thumb, or of any finger, shall be con-
32 sidered to be equal to the loss of one-half of such thumb or finger, and compensa-
33 tion shall be for one-half of the periods of time above specified. The loss
34 of any portion of the thumb or any finger, between the terminal joint
35 and the end thereof, shall be compensated for a like proportion of
36 the period of time prescribed for the loss of the first phalange of such
37 member.

38 (j) The loss of the first phalange and any portion of the second shall be
39 considered as the loss of the entire finger or thumb; *providing, however*, that in
40 no case shall the amount received for more than one finger exceed the amount pro-
41 vided in this schedule for the loss of a hand.

42 (k) For the loss of great toe, sixty-six and two-thirds per centum of
43 daily wages during thirty weeks.

44 (l) For the loss of one of the toes other than a great toe, sixty-six and two-
45 thirds per centum of daily wages during ten weeks.

46 (m) The loss of the first phalange of any toe shall be considered to be
47 equal to the loss of one-half of such toe, and compensation shall be for one-half
48 of the periods of time above specified.

49 (n) The loss of the first phalange and any portion of the second shall be
50 considered as the loss of the entire toe.

51 (o) For the loss of a hand, sixty-six and two-thirds per centum of
52 daily wages during one hundred and fifty weeks.

53 (p) For the loss of an arm, sixty-six and two-thirds per centum of
54 daily wages during two hundred weeks.

55 (q) For the loss of a foot, sixty-six and two-thirds per centum of
56 daily wages during one hundred and twenty-five weeks.

57 (r) For the loss of a leg, sixty-six and two-thirds per centum of
58 daily wages during one hundred and seventy-five weeks.

59 (s) For the loss of an eye, sixty-six and two-thirds per centum of
60 daily wages during one hundred weeks.

61 (t) For the loss of a natural tooth, sixty-six and two-thirds per centum of
62 daily wages for four weeks for each tooth lost.

63 (u) For the total loss of hearing in one ear, sixty-six and two-thirds per cen-
64 tum of daily wages during forty weeks. For the total loss of hearing in both ears
65 by one accident, sixty-six and two-thirds per centum of daily wages during one
66 hundred and sixty weeks.

67 (v) The loss of both hands, or both arms, or both feet, or both legs, or both
68 eyes, or any two thereof as a result of any one accident, shall constitute total and
69 permanent disability, to be compensated according to the provisions of clause (b).

70 (w) In all lesser or other cases involving permanent loss, or where
71 the usefulness of a member or any physical function is permanently im-
72 paired, the compensation shall be sixty-six and two-thirds per centum of daily
73 wages, and the duration of compensation shall bear such relation to the

74 specific periods of time stated in the above schedule as the disabilities bear to those
75 produced by the injuries named in the schedule. Should the employer and employee
76 be unable to agree upon the amount of compensation to be paid in cases not covered
77 by the schedule, either party may appeal to the Workmen's Compensation Bureau
78 for a settlement of the controversy.

79 (x) Hernia is a disease which ordinarily develops gradually, being very rarely
80 the result of an accident. Where there is real traumatic hernia resulting from
81 the application of force directly to the abdominal wall, either puncturing or tearing
82 the wall, compensation will be allowed. All other cases will be considered as either
83 congenital or of slow development and not compensable, being a disease rather than
84 an accidental injury; unless conclusive proof is offered that the hernia was im-
85 mediately caused by such sudden effort or severe strain that, first, the descent of
86 the hernia immediately followed the cause; second, that there was severe pain in
87 the hernial region; third, that there was such prostration that the employee was
88 compelled to cease work immediately; fourth, that the above facts were of such
89 severity that the same was noticed by the claimant and communicated to the em-
90 ployer within twenty-four hours after the occurrence of the hernia; fifth, that there
91 was such physical distress that the attendance of a licensed physician was required
92 within twenty-four hours after the occurrence of the hernia. In the case of hernia,
93 as above defined, the provisions of paragraphs thirteen, fourteen and eleven (a)
94 shall apply, until such time as the employee is able to resume some kind of work
95 with the aid of a truss or other mechanical appliance. If the employee refuses
96 to permit of an operation, the employer shall meet the requirements above speci-
97 fied, pay the reasonable costs of the truss or other appliance found necessary, and
98 also pay compensation for twenty weeks, following which his obligation shall
99 cease and terminate, unless death results from the hernia, in which case the pro-
100 visions of paragraph twelve shall apply. However, if the employee shall elect to
101 undergo an operation, by a physician selected by the employer, the employer shall
102 meet all the expense incident to such operation and recovery, not in excess of one
103 hundred and fifty dollars, together with compensation as provided in paragraph

104 eleven (a) during the periods of disability prior to and following the operation,
 105 subject to the provisions of paragraph thirteen. If the employee refuses the serv-
 106 ices of the physician selected by the employer, preferring one of his own selection,
 107 the employer shall be relieved of obligations concerning medical expense due to
 108 the operation and recovery, but shall pay compensation during the prior and re-
 109 sulting periods of disability. If death results from the hernia or operation, the pro-
 110 visions of paragraph twelve shall apply.

111 (y) The weekly compensation payments specified in paragraph eleven, are
 112 all subject to the same limitations as to maximum and minimum as are stated in
 113 clause (a) hereof.

114 (z) In case of the death of a person from any cause other than the accident,
 115 during the period of payments for permanent injury, the remaining payments
 116 shall be paid to such of his or her dependents as are included in the pro-
 117 visions of paragraph twelve of this act, or, if no dependents, the remaining
 118 amount due, but not exceeding one hundred dollars, shall be paid in a lump sum to
 119 the proper person for funeral expenses.

1 2. Paragraph twelve of the said act is hereby amended to read as follows:

2 12. In case of death, compensation shall be computed, but not distributed, on
 3 the following basis:

4 (a) For one dependent, thirty-five per centum of wages.

5 (b) For two dependents, forty per centum of wages.

6 (c) For three dependents, forty-five per centum of wages.

7 (d) For four dependents, fifty per centum of wages.

8 (e) For five dependents, fifty-five per centum of wages.

9 (f) For six or more dependents, sixty per centum of wages.

10 (g) The term "dependents" shall apply to and include any or all of
 11 the following who are dependent upon the deceased at the time of
 12 accident or death, namely: husband, wife, parents, stepparents, grand-
 13 parents, children, stepchildren, grandchildren, child in esse, posthumous

14 child, illegitimate children, brothers, sisters, half brothers, half sisters,
15 niece, nephew. Legally adopted children shall, in every particular, be considered
16 as natural children; *provided, however*, that dependency shall be conclusively pre-
17 sumed as to (a) the decedent's widow and natural children under eighteen years of
18 age who were actually a part of the decedent's household at the time of his death.
19 Every provision of this act applying to one class shall be equally applicable to the
20 other. Should any dependent of a deceased employee die during the period cov-
21 ered by such weekly payments, or should the widow of a deceased employee re-
22 marry during such period, the right of such dependent or of such widow to compen-
23 sation under this section shall cease. *It is further provided*, that the foregoing
24 schedule applies only to persons wholly dependent, and that in the case of persons
25 only partially dependent, except in the case of the widow and children, who were
26 actually a part of the decedent's household at the time of his death, the compensa-
27 tion shall be such proportion of the scheduled percentage as the amounts actually
28 contributed to them by the deceased for their support constituted of his total wages,
29 and the provision as to a six-dollar minimum shall not apply to such compensation.

30 In determining the number of dependents, where the deceased employee was a
31 minor, the number of persons dependent upon said deceased employee shall be de-
32 termined in the same way as if said deceased employee were an adult, notwith-
33 standing any rule of law as to the person entitled to a minor's wages.

33½ (h) Compensation shall be computed upon the foregoing basis. Distribution
34 shall be made among dependents, if more than one, according to the order of the
35 Workmen's Compensation Bureau, which shall, when applied to for that purpose,
36 determine, upon the facts being presented to it, the proportion to be paid to or on
37 behalf of each dependent according to the relative dependency. Payment on behalf
38 of infants shall be made to the surviving parent, if any, or to the statutory or tes-
39 tamentary guardian.

40 (i) If death results from the accident, whether there be dependents or not,
41 expenses of last sickness, not exceeding two hundred dollars. Also the cost of
42 burial, not to exceed one hundred dollars.

43 (j) In computing compensation to those named in this paragraph, except in
44 the case of husband, wife, parents and stepparents, only those under eighteen, or
45 over forty years of age, shall be included, and then only for that period in which
46 they are under eighteen or over forty; *provided, however*, that payments to such
47 physically or mentally deficient persons as are, for such reason, dependent, shall be
48 made during the full term of compensation payment.

49 (k) The compensation in case of death shall be subject to a maximum com-
50 pensation of twelve dollars per week and a minimum of six dollars
51 per week; *provided*, that if at the time of the injury, the employee receives wages
52 of less than six dollars per week, then the compensation shall be the full
53 amount of such wages per week. This compensation shall be paid during three hun-
54 dred weeks.

55 (l) Compensation under this schedule shall not apply to alien dependents not
56 residents of the United States.

1 3. Paragraph thirteen of the said act is hereby amended to read as follows:

2-6 13. No compensation other than medical aid shall accrue and be payable until
7 the employee has been disabled ten days, whether the days of disability immediately
8 follow the accident, or whether they be consecutive or not. These days shall be termed
9 the waiting period. The day that the employee is unable to continue at work by rea-
10 son of his accident, whether it be the day of the accident or later, shall count as one
11 whole day of the waiting period.

1 4. Paragraph fourteen of the said act is hereby amended to read as follows:

2-6 14. On the day of the accident, and during the next following twenty-seven
7 consecutive days, the employer shall furnish reasonable medical and hospital services
8 and medicines as and when needed not to exceed fifty dollars in value, unless the
9 employee refuses to allow them to be furnished by the employer; *provided, however*,
10 that in severe cases requiring unusual medical or surgical treatment or calling for
11 artificial limb or other mechanical appliances, the employee or his representative
12 shall be authorized to present a petition to the Workmen's Compensation Bureau,

13 and the Commissioner, deputy commissioner or referee thereof is hereby empowered,
14 when warranted by the evidence produced, to order additional services, artificial limbs
15 or other appliances not to exceed in total the sum of two hundred dollars, or to ex-
16 tend over a period not to exceed in total seventeen weeks. This paragraph shall
17 apply only to non-fatal cases.

1 5. Paragraph fourteen (a) of said act is hereby amended to read as follows:

2 14. (a) Compensation for all classes of injuries shall run consecutively, and not
3 concurrently, except as provided in paragraph fourteen, as follows: First four
4 weeks, medical and hospital services and medicines as provided in paragraph fourteen.
5 After the waiting period, compensation during temporary disability. Following
6 both, either or none of the above, compensation consecutively for each permanent
7 injury. Following any or all or none of the above, if death results from the acci-
8 dent, expenses of last sickness and burial. Following which compensation to de-
9 pendants, if any. In no case shall the total number of weekly payments be more
10 than four hundred.

1 6. Paragraph nineteen of the said act is hereby amended to read as follows:

2-6 19. In case of death compensation payments may be made directly to dependents
7 of full age and on behalf of infants to the surviving parent, if any, or to the statu-
8 tory or testamentary guardian of any such infant; or the Workmen's Compensation
9 Bureau, on application or when a petition has been filed, may order such payments to
10 be made to the administrator or executor of the decedent, or to such person as
11 would be appointed administrator of the estate of the decedent, and may, if com-
12 pensation is to be paid weekly, require, in the discretion of the bureau, the filing
13 with the bureau of a bond, with satisfactory surety, to the dependents, for not
14 more than one hundred dollars, for the proper application of the compensation
15 payments. If a commutation of the award is ordered and it is impracticable to
16 make distribution of the commuted sum among the persons entitled thereto, then
17 the bureau, on making such commutation, shall require a bond, with such sureties
18 and in such amount as will, in the judgment of the bureau, fully secure the persons
19 severally entitled to portions of such commuted sum.

1 7. Insert a clause in the said act to be number 20 (e), to read as follows:

2 20. (e) Whenever it shall appear that an employer is being prejudiced by virtue
3 of the refusal of an injured employee to accept proffered medical and surgical treat-
4 ment deemed necessary by the physician selected by the employer, or his failure or
5 neglect to comply with the instructions of the physician in charge of the case, such
6 employer is hereby authorized to file a petition with the Workmen's Compensation
7 Bureau, which is hereby empowered to order proper medical and surgical treat-
8 ment at the expense of the employer, and in event of refusal or neglect by the
9 employee to comply with this order the Bureau shall make such modification in
10 the award contained in the schedule as the evidence produced shall justify.

1 8. Paragraph twenty-one of the said act is hereby amended to read as follows:

2 21. (b) The compensation hereby provided may be commuted by said Work-
3 men's Compensation Bureau at its present value, when discounted at five per centum
4 simple interest, upon application of either party, with due notice to the other, if it
5 appears that such commutation will be for the best interest of the employee or the
6 dependents of the deceased employee, or that it will avoid undue expense or undue
7 hardship to either party, or that such employee or dependent has removed or is about
8 to remove from the United States, or that the employer has sold or otherwise dis-
9 posed of the greater part of his business or assets.

10 (c) Unless so approved, no compensation payments shall be commuted.

11 (d) In determining whether the commutation asked for will be for the best
12 interest of the employee or the dependents of the deceased employee, or that it will
13 avoid undue expense or undue hardship to either party, the Workmen's Compensa-
14 tion Bureau or the judge of the Court of Common Pleas will constantly bear in mind
15 that it is the intention of this act that compensation payments are in lieu of wages,
16 and are to be received by the injured employee or his dependents in the same manner
17 in which wages are ordinarily paid. Therefore, commutation is a departure from
18 the normal method of payment, and is to be allowed only when it clearly appears
19 that some unusual circumstances warrant such a departure. Commutation shall not

20 be allowed for the purpose of enabling the injured employee or the dependents of a
21 deceased employee to satisfy a debt, or to make payment to physician, lawyers or
22 any other persons.

23 (e) When any proceedings have been taken under the provisions of paragraph
24 twenty or paragraph twenty-one of this act, the Workmen's Compensation Bureau
25 or the judge of the Court of Common Pleas shall, as a part of its or his determina-
26 tion and order, either for payment or for commutation of payment, settle and deter-
27 mine the amount of compensation to be paid by the injured employee or his depend-
28 ents, on behalf of whom such proceedings are instituted, to his legal adviser or ad-
29 visers, and it shall be unlawful for any lawyer, or other person acting in that
30 behalf, to ask for, contract for or receive any larger sum than the amount so fixed;
31 and in the order determining weekly payments where no commutation is made, the
32 bureau or the said judge shall also determine the amount to be paid per week from
33 the compensation payment on account of the legal fee thus awarded, and it shall be
34 unlawful for the legal adviser, or other person acting in that behalf, to ask for, con-
35 tract for or receive a larger sum per week than the allowance thus determined.

36 (f) An agreement or award of compensation may be modified at any time by a
37 subsequent agreement, or reviewed upon the application of either party on the
38 ground that the incapacity of the injured employee has subsequently increased or
39 diminished. In such case the provisions of paragraph seventeen with reference to
40 medical examination shall apply.

41 (g) Whenever lawful compensation shall have been withheld from an injured
42 employee or dependents for a term of three months or more, simple interest on
43 each weekly payment at five per centum per annum for the period of delay of each
44 payment may, at the discretion of the bureau, be added to the amount due at the
45 time of settlement.

1 9. Paragraph twenty-three is hereby amended to read as follows:

2 23. (a) For the purpose of this act, wilful negligence shall consist of (1) de-
3 liberate act or deliberate failure to act, or (2) such conduct as evidences reckless

1 indifference to safety, or (3) intoxication, operating as the proximate cause of in-
2 jury.

3 (b) Whenever in this act the singular is used the plural shall be included, where
4 the masculine gender is used, the feminine and neuter shall be included.

5 (c) Employer is declared to be synonymous with master, and includes natural
6 persons, partnerships, and corporations; employee is synonymous with servant, and
7 includes all natural persons who perform service for another for financial considera-
8 tion, exclusive of casual employments, which shall be defined, if in connection with
9 the employer's business, as employment the occasion for which arises by chance or
10 is purely accidental; or if not in connection with any business of the employer, as
11 employment not regular, periodic or recurring.

12 (d) Amputation between the elbow and the wrist shall be considered as the
13 equivalent of the loss of a hand, and amputation at the elbow shall be considered
14 equivalent to the loss of the arm. Amputation between the knee and the ankle shall
15 be considered as the equivalent of the loss of a foot, and amputation at the knee shall
16 be considered equivalent to the loss of the leg.

17 (e) No agreement, composition, or release of damages made before the hap-
18 pening of any accident, except the agreement defined in section two of this act, shall
19 be valid or shall bar a claim for damages for the injury resulting therefrom, and
20 any such agreement, other than that defined in section two herein, is declared to be
21 against the public policy of this State. The receipt of benefits from any association,
22 society, or fund to which the employee shall have been a contributor shall not bar
23 the recovery of damages by action at law or the recovery of compensation under
24 section two thereof.

25 (f) Where a third person or corporation is liable to the employee or his depend-
26 ents for an injury or death, the existence of a right of compensation from the em-
27 ployer under this statute shall not operate as a bar to the action of the employee or his
28 dependents, nor be regarded as establishing a measure of damage therein. However,
29 in event that the employee or his dependents shall recover from the said third person
30 or corporation, a sum equivalent to or greater than the total compensation payments

34 for which the employer is liable under this statute, the employer shall be released
35 thereby from the obligation of compensation. If, however, the sum so recovered
36 from the third person or corporation is less than the total of compensation payments,
37 the employer shall be liable only for the difference. The obligation of the employer
38 under this statute to make compensation shall continue until the payment, if any, by
39 such third person or corporation is made. Such employer shall file with the third
40 person or corporation so liable, at any time prior to payment, a statement of the
41 compensation agreement or award between himself and his employee, or the depend-
42 ents of the employee, and the employer shall thereafter be entitled to receive from
43 such third person or corporation, upon the payment of any amount in release or in
44 judgment by the third person or corporation on account of his or its liability to the
45 injured employee or his dependents, a sum equivalent to the amount of compensa-
46 tion payments which the employer has theretofore paid to the injured employee or
47 his dependents, which payments shall be deducted by the third person or corporation
48 from the sum paid in release or judgment to the injured employee or his depend-
49 ents.

50-65 (g) Wherever in section two of this act the term "wages" is used it shall be
66 construed to mean the money rate at which the service rendered is recompensed
67 under the contract of hiring in force at the time of the accident, and shall not in-
68 clude gratuities received from the employer or others. Board and lodging
69 when furnished by the employer as part of the wages shall be included and
70 valued at five dollars per week, unless the money value of such advantages
70½ shall have been otherwise fixed by the parties at the time of hiring. Where
71 prior to the accident, the rate of wages is fixed by the output of the em-
72 ployee, the daily wage shall be calculated by dividing the number of days the work-
73 man was actually employed into the total amount the employee earned during the
74 preceding six months, or so much thereof as shall refer to employment by the same
75 employer. Where the rate of wages is fixed by the hour, the daily wage shall be
76 found by multiplying the hourly rate by the customary number of working hours
77 constituting an ordinary day in the character of the work involved. In any case

78 the weekly wage shall be found by multiplying the daily wage by five and one-half,
79 or if the employee worked a greater proportion of the week regularly, then by six,
80 six and one-half or seven, according to the customary number of working days
81 constituting an ordinary week in the character of work involved.

82 (h) In case of personal injury or death all claims for compensation on ac-
83 count thereof shall be forever barred unless a petition is filed in duplicate with the
84 secretary of the Workmen's Compensation Bureau, at the State House, in Tren-
85 ton, within one year after the date on which the accident occurred, or in case an
86 agreement of compensation has been made between such employer and such claim-
87 ant, then within one year after the failure of the employer to make payment pur-
88 suant to the terms of such agreement; or in case a part of the compensation has
89 been paid by such employer, then within one year after the last payment of com-
90 pensation.

1 10. All acts and parts of acts inconsistent herewith are hereby repealed, and
2 this act shall take effect on the fourth day of July next, succeeding its passage and
3 approval.

STATE OF NEW JERSEY.

INTRODUCED JANUARY 16, 1911.

By Mr. EDGE.

Referred to Committee on Corporations.

AN ACT prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder.

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

SECTION I. COMPENSATION BY ACTION AT LAW.

I 1. When personal injury is caused to an employe in the course of his employ-
2 ment, of which the negligence of the employer is the natural and proximate cause,
3 he shall receive compensation therefor from his employer, provided the employe was
4 himself not willfully negligent at the time of receiving such injury.

I 2. The right to compensation as provided by section I of this act shall not
2 be defeated upon the ground that the injury was caused in any degree by the negli-
3 gence of a fellow employe, or that the injured employe assumed the risks inherent in
4 or incidental to his employment, or arising from the failure of the employer to pro-
5 vide and maintain safe premises and suitable appliances; which said two grounds of
6 defense are hereby abolished.

I 3. If an employer enters into a contract, written or verbal, with an independent
2 contractor to do part of such employer's work, or if such contractor enters into a
3 contract, written or verbal, with a subcontractor to do all or any part of such work
4 comprised in such contractor's contract with the employer, such contract or sub-

PROPERTY OF
NEW JERSEY STATE LIBRARY,

185 W. State Street
Trenton, N. J.

5 contract shall not bar the liability of the employer under this act for injury caused
6 to an employe of such contractor or subcontractor by any defect in the condition of
7 the ways, works, machinery or plant, if they are the property of the employer, or
8 are furnished by him, or if the defect arose or had not been discovered and remedied
9 through the negligence of the employer or some one entrusted by him with the duty
10 of seeing that they were in proper condition.

1 4. The provisions of paragraphs one, two and three shall apply to any claim for
2 the death of an employe arising under an act entitled "An act to provide for the
3 recovery of damages in cases where the death of a person is caused by wrongful
4 act, neglect or default," approved March third, eighteen hundred and forty-eight,
5 and the amendments thereof and supplements thereto.

1 5. In all actions at law brought pursuant to section I of this act, the burden
2 of proof to establish willful negligence in the injured employe shall be upon the
3 defendant.

1 6. No claim for legal services or disbursements pertaining to any demand made
2 or suit brought under the provisions of this act shall be an enforceable lien against
3 the amount paid as compensation, unless the same be approved in writing by the
4 judge or justice presiding at the trial, or in case of settlement without trial, by the
5 judge of the circuit court of the district in which such issue arose.

SECTION II. ELECTIVE COMPENSATION.

1 7. When employer and employe shall by agreement, either express or implied,
2 as hereinafter provided, accept the provisions of section II of this act, compensation
3 for injuries to or for the death of such employe in the course of his employment
4 shall be made by the employer according to the schedule contained in paragraph ten,
5 in all cases except when the injury or death is intentionally self-inflicted and the
6 burden of proof of such fact shall be upon the employer.

1 8. Such agreement shall be a surrender by the parties thereto of their rights to
2 any other method, form or amount of compensation or determination thereof than as
3 provided in section II of this act, and an acceptance of all the provisions of section
4 II of this act, and shall bind the employe himself and for compensation for his

5 death shall bind his personal representatives, his widow and next of kin, as well as
6 the employer, and those conducting his business during bankruptcy or insolvency.

1 9. Every contract of hiring made subsequent to the time provided for this act
2 to take effect shall be presumed to have been made with reference to the provisions
3 of section II of this act, and unless there be as a part of such contract an express
4 statement in writing, either in the contract itself or by written notice from either
5 party to the other, that the provisions of section II of this act are not intended to
6 apply, then it shall be presumed that the parties have accepted the provisions of sec-
7 tion II of this act and have agreed to be bound thereby.

1 10. Every contract of hiring, verbal, written or implied from circumstances,
2 now in operation or made or implied prior to the time limited for this act to take
3 effect, shall be presumed to have been made with reference to section II of this act,
4 unless either party shall in writing notify the other to such contract that the provi-
5 sions of section II are not intended to apply; if such notice is not given prior to the
6 time stated for this act to take effect, it shall then be presumed that the parties
7 have accepted the provisions of section II of this act and have agreed to be bound
8 thereby.

1 11. The contract for the operation of the provisions of section II of this act
2 may be terminated by either party upon thirty days' notice in writing.

1 12. Following is the schedule of compensation:

2 (a) For injury producing temporary disability, fifty per centum of the wages
3 received at the time of injury, subject to a maximum compensation of ten dollars
4 per week and a minimum of five dollars per week; *provided*, that if at the time of
5 injury the employe receives wages of less than five dollars per week, then he shall
6 receive the full amount of such wages per week. This compensation shall be paid
7 during the period of such disability, not, however, beyond three hundred weeks.

8 (b) For disability total in character and permanent in quality, fifty per centum
9 of the wages received at the time of injury, subject to a maximum compensation
10 of ten dollars per week and a minimum of five dollars per week; *provided*, that
11 if at the time of injury the employe receives wages of less than five dollars per

12 week, then he shall receive the full amount of wages per week. This compensation
13 shall be paid during the period of such disability, not, however, beyond four hun-
14 dred weeks.

15 (c) For disability partial in character but permanent in quality, the compensa-
16 tion shall be based upon the extent of such disability. In cases included by the fol-
17 lowing schedule the compensation shall be that named in the schedule, to wit:

18 For the loss of a hand, fifty per centum of daily wages during one hundred
19 and fifty weeks.

20 For the loss of an arm, fifty per centum of daily wages during two hundred
21 weeks.

22 For the loss of a foot, fifty per centum of daily wages during one hundred
23 and twenty-five weeks.

24 For the loss of a leg, fifty per centum of daily wages during one hundred
25 and seventy-five weeks.

26 For the loss of an eye, fifty per centum of daily wages during sixty weeks.

27 The loss of both of any such members or of any two thereof shall constitute
28 total disability to be compensated according to the provisions of clause (b).

29 In all other cases in this class the compensation shall bear such relation to the
30 amounts stated in the above schedule as the disabilities bear to those produced by
31 the injuries named in the schedule. Should the employer and employe be unable to
32 agree upon the amount of compensation to be paid in cases not covered by the
33 schedule, the amount of compensation shall be settled according to the provisions of
34 paragraph twenty hereof.

35 The amounts specified in this clause are all subject to the same limitations as
36 to maximum, minimum and duration as are stated in clause (a).

37 In case of death compensation shall be made as follows:

38 (1) Total dependents.

39 If orphans, fifty per centum of wages of deceased.

40 If widow alone, twenty-five per centum of wages.

41 If widow and one child, forty per centum of wages.

42 If widow and two children, forty-five per centum of wages.

43 If widow and three children, fifty per centum of wages.

44 If widow and four children, fifty-five per centum of wages.

45 If widow and five children or more, sixty per centum of wages.

46 If widow and father or mother, fifty per centum of wages.

47 Dependents not distinctly provided for in the above schedule shall receive
48 compensation in the discretion of the court having jurisdiction as hereinafter pro-
49 vided, as nearly as possible on the basis of this schedule, having regard to com-
50 parative degrees of relationship.

51 (2) Partial dependents.

52 Fifty per centum of the portion of the wages contributed by the deceased to
53 the partial dependents.

54 (3) No dependents.

55 Expenses of last sickness and burial not exceeding two hundred dollars.

56 In computing compensation to children, only those under sixteen years of age
57 shall be included, and only during the period in which they are under that age.

58 The compensation in case of death shall be subject to a maximum compensa-
59 tion of ten dollars per week and a minimum of five dollars per week; *provided*,
60 that if at the time of injury the employe receives wages of less than five dollars per
61 week, then the compensation shall be the full amount of such wages per week. This
62 compensation shall be paid during three hundred weeks.

63 Compensation under this schedule shall not apply to alien dependents not resi-
64 dents of the United States.

1 13. No compensation shall be allowed for the first two weeks after injury re-
2 ceived, except as provided by paragraph fourteen, nor in any case unless the em-
3 ployer has actual knowledge of the injury or is notified thereof within the period
4 specified in paragraph fifteen.

1 14. During the first two weeks after the injury the employer shall furnish
2 reasonable medical and hospital services and medicines, as and when needed, not to

3 exceed one hundred dollars in value, unless the employe refuses to allow them to be
4 furnished by the employer.

1 15. Unless the employer shall have actual knowledge of the occurrence of the
2 injury, or unless the employe, or some one on his behalf, or some of the dependents,
3 or some one on their behalf, shall give notice thereof to the employer within fourteen
4 days of the occurrence of the injury, then no compensation shall be due until such
5 notice is given or knowledge obtained. If the notice is given, or the knowledge
6 obtained within thirty days from the occurrence of the injury, no want, failure, or
7 inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer
8 shall know that he was prejudiced by such want, defect or inaccuracy, and then only
9 to the extent of such prejudice. If the notice is given, or the knowledge obtained
10 within ninety days, and if the employe, or other beneficiary, shall show that his failure
11 to give prior notice was due to his mistake, inadvertence, ignorance of fact or law,
12 or inability, or to the fraud, misrepresentation or deceit of another person, or to any
13 other reasonable cause or excuse, then compensation may be allowed, unless, and
14 then to the extent only that the employer shall show that he was prejudiced by
15 failure to receive such notice. Unless knowledge be obtained, or notice given, within
16 ninety days after the occurrence of the injury, no compensation shall be allowed.

1 16. The notice referred to may be served personally upon the employer, or upon
2 any agent of the employer upon whom a summons may be served in a civil action,
3 or by sending it through the mail to the employer at the last known residence or
4 business place thereof within the State, and shall be substantially in the following
5 form:

6 To (name of employer):

7 You are hereby notified that a personal injury was received by
8 (name of employe injured), who was in your employ at (place) while
9 engaged as (nature of employment), on or about the ()
10 day of (), nineteen hundred and (),
11 and that compensation will be claimed therefor.

12 Signed,

13 ().

14 but no variation from this form shall be material if the notice is sufficient to advise
15 the employer that a certain employe, by name, received an injury in the course of
16 his employment on or about a specified time, at or near a certain place.

1 17. After an injury, the employe, if so requested by his employer, must submit
2 himself for examination at some reasonable time, and as often as may be reasonably
3 requested, to a physician or physicians authorized to practice under the laws of this
4 State. If the employe requests, he shall be entitled to have a physician or physi-
5 cians of his own selection present to participate in such examination. The refusal of
6 the employe to submit to such examination shall deprive him of the right to com-
7 pensation during the continuance of such refusal. When a right to compensation is
8 thus suspended no compensation shall be payable in respect of the period of suspen-
9 sion.

1 18. In case of a dispute over, or failure to agree upon, a claim for compensa-
2 tion between employer and employe, or the dependents of the employe, either party
3 may submit the claim, both as to questions of fact, the nature and effect of the in-
4 juries, and the amount of compensation therefor according to the schedule herein
5 provided, to the judge of the court of common pleas of such county as would
6 have jurisdiction in a civil case, or where there is more than one judge of said
7 court, then to either or any of said judges of such court, which judge is hereby
8 authorized to hear and determine such disputes in a summary manner, and his de-
9 cision as to all questions of fact shall be conclusive and binding.

1 19. In case of death, where no executor or administrator is qualified, the said
2 judge shall, by order, direct payment to be made to such person as would be ap-
3 pointed administrator of the estate of such decedent upon like terms as to bond for
4 the proper application of compensation payments as are required of administra-
5 tors.

1 20. Procedure in case of dispute shall be as follows:

2 Either party may present a petition to said judge setting forth the names and
3 residences of the parties and the facts relating to employment at the time of injury,
4 the injury in its extent and character, the amount of wages received at the time

5 of injury, the knowledge of the employer or notice of the occurrence of said injury,
6 and such other facts as may be necessary and proper for the information of the said
7 judge, and shall state the matter or matters in dispute and the contention of the
8 petitioner with reference thereto. This petition shall be verified by the oath or
9 affirmation of the petitioner.

10 Upon the presentation of such petition the same shall be filed with the clerk of
11 the court of common pleas, and the judge shall fix a time and place for the hearing
12 thereof, not less than three weeks after the date of the filing of said petition. A
13 copy of said petition shall be served as summons in a civil action and may be served
14 within four days thereafter upon the adverse party. Within seven days after the
15 service of such notice the adverse party shall file an answer to said petition, which
16 shall admit or deny the substantial averments of the petition, and shall state the
17 contention of the defendant with reference to the matters in dispute as disclosed
18 by the petition. The answer shall be verified in like manner as required for a peti-
19 tion.

20 At the time fixed for hearing or any adjournment thereof the said judge shall
21 hear such witnesses as may be presented by each party, and in a summary manner
22 decide the merits of the controversy. This determination shall be filed in writing
23 with the clerk of the common pleas court, and judgment shall be entered thereon in
24 the same manner as in causes tried in the court of common pleas, and shall contain
25 a statement of facts as determined by said judge. Subsequent proceedings thereon
26 shall only be for the recovery of moneys thereby determined to be due, provided
27 that nothing herein contained shall be construed as limiting the jurisdiction of the
28 Supreme Court to review questions of law by certiorari. Costs may be awarded by
29 said judge in his discretion, and when so awarded the same costs shall be allowed,
30 taxed and collected as are allowed, taxed and collected for like services in the com-
31 mon pleas court.

1 21. The amounts payable periodically as compensation may be commuted to
2 one or more lump sum payments by the judge of the court of common pleas having
3 jurisdiction as set forth in the preceding paragraph, upon the application of either

4 party, in his discretion, provided the same be in the interest of justice. Unless so
5 approved, no compensation payments shall be commuted.

6 An agreement or award of compensation may be modified at any time by a
7 subsequent agreement, or at any time after one year from the time when the same
8 became operative it may be reviewed upon the application of either party on the
9 ground that the incapacity of the injured employe has subsequently increased or
10 diminished. In such case the provisions of paragraph seventeen with reference to
11 medical examination shall apply.

1 22. The right of compensation granted by this act shall have the same prefer-
2 ence against the assets of the employer as is now or may hereafter be allowed by
3 law for a claim for unpaid wages for labor. Claims or payments due under this
4 act shall not be assignable, and shall be exempt from all claims of creditors and
5 from levy, execution or attachment.

1 23. For the purposes of this act, willful negligence shall consist of (1) de-
2 liberate act or deliberate failure to act, operating as the proximate cause of injury, or
3 (2) such conduct as evidences reckless indifference to safety, or (3) intoxication.

4 Wherever in this act the singular is used the plural shall be included: where
5 the masculine gender is used, the feminine and neuter shall be included.

6 Employer is declared to be synonymous with master and includes natural per-
7 sons, partnerships and corporations; employe is synonymous with servant and in-
8 cludes all natural persons who perform service for another for financial considera-
9 tion, exclusive of casual employments.

10 Amputation anywhere below the elbow shall be considered as the loss of a hand,
11 and amputation anywhere below the knee as the loss of a foot.

1 24. In case for any reason any paragraph or any provision of this act shall be
2 questioned in any court and shall be held to be unconstitutional or invalid, the
3 same shall not be held to affect any other paragraph or provision of this act, ex-
4 cept that sections I and II are hereby declared to be inseparable, and if either sec-
5 tion be declared void or inoperative in an essential part, so that the whole of such
6 section must fall, the other section shall fall with it and not stand alone.

1 25. All acts or parts of acts inconsistent with the provisions of this act are
2 hereby repealed.

1 26. This act shall take effect on the fourth day of July next succeeding its
2 passage and approval.

Correctly printed.

On motion of Mr. Prince, the Senate then took a recess until 2:15, on the conclusion of which, and

Under the direction of the President, the Secretary called the Senate, when the following Senators appeared and answered the call:

Messrs. Ackerman (President), Bradley, Edge, Frelinghuysen, Gaunt, Gebhardt, Johnson, Lewis, Osborne, Plummer, Prince, Silzer—12.

Mr. Edge, Chairman of the Committee on Corporations, reported

Senate Bill No. 27, entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,"

With the following committee amendments, which were ordered printed in the bill for consideration:

Paragraph one, line one, after the word "employe" insert "by accident arising out of and".

Line two, after the phrase "of which the" insert "actually or lawfully imputed."

Line four, strike out period and insert the following: "and the question of whether the employe was willfully negligent shall be one of fact to be submitted to the jury subject to the usual superintending powers of a court to set aside a verdict rendered contrary to the evidence."

Paragraph two, line three, strike out comma and insert semicolon.

Line four, after the phrase "or incidental to" insert the words "or arising out of". Omit the comma in same line.

Line five, strike out the word "two".

Paragraph seven, line three, after the first word "for" insert the word "personal". After the word "employe" insert the words "by accident arising out of and."

Line five, after the word "self-inflicted" add "or when intoxication is the natural and proximate cause of injury."

Paragraph nine, line four, after the word "writing" insert "prior to any accident."

Line seven, add as part of paragraph nine the following: "In the employment of minors, section II shall be presumed to apply unless the notice be given by the parent or guardian of the minor."

Paragraph ten; omit the whole of this paragraph.

Paragraph eleven; strike out the figures 11 and insert the figures 10.

Line two; strike out the period and insert the words "prior to any accident."

Paragraph twelve, line one, strike out the figures 12 and insert the figures 11.

Page four, subdivision (c), line seventeen, after the words "to wit:" insert the following:

"For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

For the loss of a first finger, commonly called index finger, fifty per centum of daily wages during thirty-five weeks.

For the loss of a second finger, fifty per centum of daily wages during thirty weeks.

For the loss of a third finger, fifty per centum of daily wages during twenty weeks.

For the loss of a fourth finger, commonly called little finger, fifty per centum of daily wages during fifteen weeks.

The loss of the first phalange of the thumb, or of any finger, shall be considered to be equal to the loss of one-half of such thumb, or finger, and compensation shall be one-half the amounts above specified.

The loss of more than one phalange shall be considered as the loss of the entire finger or thumb; providing, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.

For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

For the loss of one of the toes other than a great toe, fifty per centum of daily wages during ten weeks.

The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be one-half of the amount above specified.

The loss of more than one phalange shall be considered as the loss of the entire toe."

Line twenty-six, strike out the word "sixty" and insert the words "one hundred".

Line twenty-seven, strike out the words "of any such members" and insert the words "hands or both arms or both feet or both legs or both eyes."

Line thirty-six, after the word "maximum" insert the word "and". Strike out the words "and duration".

Line thirty-seven, change space to indicate paragraph and insert the figures 12. Strike out the words "made as follows:" and insert in lieu thereof the following: "computed but not distributed on the following basis:"

Line thirty-nine, after the word "If" insert the words "orphan or". Strike out the word "fifty" and insert the words "a minimum of twenty-five". Strike out the period and insert the words "with ten per centum additional for each orphan in excess of two, with a maximum of sixty per centum."

Page five, strike out the whole of lines forty-seven, forty-eight, forty-nine, fifty, fifty-one, fifty-two and fifty-three, and insert in lieu thereof the following: "Compensation in case of death shall be computed on the basis of the foregoing schedule, but shall be distributed according to the laws of this State providing for the distribution of the personal property of an intestate decedent, unless decedent has in fact left a will."

Page five, line fifty-seven, strike out period, insert comma, and add "at which time payment on account of such child shall cease."

Paragraph fifteen, line eight, strike out the word "know" and insert the word "show".

Page nine, after paragraph twenty-two, insert "Section III. General Provisions."

Paragraph twenty-three, line two, strike out the words "operating as the proximate cause of injury."

Line three, insert after the word "intoxication" a comma and the words "operating as the proximate cause of injury."

Line ten, strike out the words "anywhere below" and insert the word "between". After the word "elbow" insert the words "and the wrist". After the word "as" insert the words "the equivalent of".

Line eleven, strike out the words "anywhere below" and insert the word "between". After the word "knee" strike out the word "as" and insert "and the ankle, shall be considered as the equivalent of".

Senate Bill No. 57, entitled "A supplement to an act entitled 'An act for the punishment of crimes'" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight,

Was taken up and read a third time.

Upon the question, "Shall this Printed bill pass?" it was decided as follows:

provide for the care, able men and idiotic

le, ordered to have committee on Appropria-

plement to an act freeholders in the " approved April twenty-six, supplement hundred and eighty-

, ordered to have a committee on Judiciary.

quiring the consent Commissioners for of any municipality

le, ordered to have committee on Railroads,

committee on Banks and

it to an act entitled doing business in the cities of such com- thousand eight hun-

on Game and Fish-

o amend an act en- fish and to regulate

the catching, taking and destruction of fish in the Delaware river below Trenton Falls, within the jurisdiction, respectively, of the Commonwealth of Pennsylvania and of the State of New Jersey, and providing penalties for violation of its provisions, and to repeal acts inconsistent therewith," approved April twenty-first, one thousand nine hundred and nine,

Favorably, without amendment.

A message was received from the Governor, by the hands of Mr. Tumulty, his Secretary, sealed and indorsed "Nominations."

The further consideration of the pending amendments to Senate Bill No. 27 were taken up.

The following pending amendment by Senator Gebhardt was read:

Add to the above bill, paragraph twenty-seven, in section two, as follows:

"Every right of action for negligence to recover damages for injuries or injuries resulting from death either at the common law or by statute, is continued and nothing in this act contained shall be construed as limiting such right of action, nor for any injuries or death which have heretofore occurred or which may hereafter occur, nor shall the failure to give the notice provided for in paragraph fifteen, of section two of this act be a bar to the maintenance of any suit upon any such right of action, and the rights by the common law and statute are hereby expressly reserved, and the plaintiff may elect to proceed either under the present common law and statutes or under this act, but not under both."

And was disagreed to by the following vote:

In the affirmative were—

Messrs. Gebhardt, Silzer—2.

In the negative were—

Messrs. Ackerman (President), Bradley, Brown, Cornish, Edge, Fielder, Fitzherbert, Frelinghuysen, Johnson, Leavitt, Lewis, Low, Nichols, Osborne, Plummer, Prince—15.

The following pending amendment by Senator Leavitt was read:

401

ant
ion
ted
ose
rly
of
the
ch,
ed
iti-
ly
on-
but
re
or
If
ts
ne
ty
ts
le
s
is

f

Amend section one, paragraph three, Senate Act 27, beginning with line after word "condition": "If, however, on trial the evidence presented shows the injury to have been caused through negligence of the contractor or sub-contractor through their own act in which the employer has no part, he or they, either or both, shall be liable for such damages as the evidence may warrant".

And was disagreed to by the following vote:

In the affirmative were—

Messrs. Leavitt, Low, Plummer, Price, Silzer—5.

In the negative were—

Messrs. Ackerman (President, Brown, Cornish, Edge, Fielder, Fitzherbert, Frelinghuysen, Gebhardt, Johnson, Nichols, Osborne—11.

The following pending amendments by Mr. Leavitt were read and disagreed to:

Amend section two by inserting a new paragraph to be known as paragraph number ten, to read as follows:

"If any employer does not accept the provisions of this section relating to elective compensation, he shall not avail himself of any of the common law defenses now in force. If any employe does not accept the provisions of said section, he shall not avail himself of the provisions of this act, but shall be subject to all the existing common law defenses of the employer."

Make the present paragraph number ten read paragraph number eleven, and all subsequent paragraphs to correspond.

Mr. Silzer offered the following amendment:

Section II of this act shall only apply to such employes as shall receive twenty dollars a week wages or less; those receiving more shall not be subject to the provisions of Section II.

Which was lost by the following vote:

In the affirmative were—

Messrs. Gebhardt, Low, Silzer—3.

In the negative were—

Messrs. Ackerman (President), Bradley, Cornish, Edge, Fielder, Frelinghuysen, Gaunt, Johnson, Lewis, Nichols, Osborne, Plummer, Price, Prince—14.

Mr. Si
To sec
"Notic
employe'
act."

Which
In the
Messrs.

In the
Mr. Lea
Mr. S

Add a
"The
act, and

Whicl
In the
Messrs.

In the
Messrs.

Mr. S

Add t

"That
deavor t
a copy o

"Each
one or n
year aft

"Whe
employi'

"But.
as the o

27, beginning
1 trial the evi-
used through
ugh their own
either or both,
y warrant”.

Mr. Silzer offered the following amendment:

To section sixteen add the following:

“Notice served at the office of, or on the person who was the
employee’s immediate superior, shall be a compliance with this
act.”

Which was read and adopted by the following vote:

In the affirmative were—

Messrs. Ackerman (President), Bradley, Cornish, Edge, Fielder,
Frelinghuysen, Gaunt, Gebhardt, Johnson, Lewis, Low,
Nichols, Osborne, Plummer, Price, Silzer—16.

In the negative was—

Mr. Leavitt—1.

Mr. Silzer offered the following amendment:

Add as a new section and renumber other sections accordingly:

“The right by trial by jury is preserved in all cases under this
act, and may be had in all cases upon the demand of either party.”

Which was disagreed to by the following vote:

In the affirmative were—

Messrs. Ackerman (President), Cornish, Gebhardt, Leavitt,
Low, Nichols, Osborne, Silzer—8.

In the negative were—

Messrs. Bradley, Brown, Edge, Fielder, Frelinghuysen, Gaunt,
Johnson, Lewis, Plummer, Price, Prince—11.

Mr. Silzer offered the following amendment:

Add to this section and number others accordingly:

“That the Department of Labor shall through its officers en-
deavor to deliver into the hands of each employer in any factory
a copy of this act.

“Each factory owner shall post conspicuously in his factory
one or more copies of this act and keep the same so posted for one
year after the adoption of this act.

“When employing any person subject to this act the person so
employing shall hand to the employe a copy of this act.

“But failure to do so shall have no effect on the parties so far
as the operation of this act is concerned.”

Edge, Fielder,
nson, Nichols,

vitt were read

1 to be known

of this section
ail himself of
f any employe
shall not avail
subject to all

ragraph num-
pond.

1 employes as
hose receiving
on II.

Edge, Fielder,
vis, Nichols,

I. }
ortant
ation
nited
npose
early
rt of
n the
hich,
nited
enti-
early
con-
put
nore
1 or
If
its
the
may
ests
the
nt,
utes
as
of
le-
le,

Which was disagreed to by the following vote:

In the affirmative were—

Messrs. Gebhardt, Low, Silzer—3.

In the negative were—

Messrs. Ackerman (President), Bradley, Cornish, Edge, Fielder, Frelinghuysen, Gaunt, Johnson, Leavitt, Lewis, Nichols, Osborne, Plummer, Prince—15.

Mr. Silzer moved that the amendments be printed and the bill be laid over on second reading, which was disagreed to.

Said bill, as amended, was then read a second time, considered by sections, agreed to, ordered to be reprinted, and the bill to have a third reading.

A message was received from the Governor, by the hands of Mr. Tumulty, his Secretary, sealed and indorsed "Nominations."

Mr. Nichols offered the following resolution, which was read and adopted:

WHEREAS, It is announced that Colonel John J. Toffey, for two terms State Treasurer of New Jersey, deceased at his home in Hudson county at an early hour yesterday morning; therefore

Resolved, That the sympathies of this Senate be extended to the family of the late Treasurer in their bereavement in remembrance of the distinguished service Colonel Toffey rendered to the nation in the trying hours of the Civil War, and in the important office of State Treasurer in later years.

Resolved, That a minute of these resolutions be made in the Journal of the Senate to the memory of this gallant soldier and faithful public official.

Mr. Prince, Chairman of the Committee on Judiciary, reported

Senate Bill No. 192, entitled "An act in relation to proof of wills or codicils during the lifetime of the testator,"

Favorably, without amendment.

Mr. Hand, Chairman of the Committee on Boroughs and Townships, reported

Assembly Bill No. 226, entitled "An act to extend the territorial boundaries of the borough of Rumson, in the county of

Monmouth, by Shrewsbury in s

Favorably, w

Mr. Brown, reported

Senate Bill 1 supplement to regulation of the pond; one thous

By Committe

Which was

Mr. Brown, eries, reported

Assembly Bi ing in the Ran

Assembly B 'An act for th fish, to regula close seasons 1903), approv and three,

And

Assembly B 'An act for th fish, to regula close seasons 1903),' app and three,

Favorably,

Mr. Brown reported

Assembly titled 'An act dition of the proved April

Favorably,

SENATE, No. 125.

STATE OF NEW JERSEY.

INTRODUCED FEBRUARY 4, 1913.

By Mr. EDGE.

Referred to Committee on Corporations.

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

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

1 I. Paragraph eleven of the act referred to in the title of this act is hereby
2 amended to read as follows:

3 II. Following is the schedule of compensation:

4 (a) For injury producing temporary disability, fifty per centum of the wages
5 received at the time of injury, subject to a maximum compensation of ten dollars
6 per week and a minimum of five dollars per week; *provided*, that if at the time of
7 injury the employee receives wages of less than five dollars per week, then he shall
8 receive the full amount of such wages per week. This compensation shall be paid
9 during the period of such disability, not, however, beyond three hundred weeks.

10 (b) For disability total in character and permanent in quality, fifty per centum
11 of the wages received at the time of injury, subject to a maximum compensation of
12 ten dollars per week and a minimum of five dollars per week; *provided*, that if at
13 the time of injury the employee receives wages of less than five dollars per week,

14 then he shall receive the full amount of wages per week. This compensation shall be
15 paid during the period of such disability, not, however, beyond four hundred weeks.

16 (c) For disability partial in character but permanent in quality, the compensa-
17 tion shall be based upon the extent of such disability. In cases included by the fol-
18 lowing schedule the compensation shall be that named in the schedule, to wit:

19 For the loss of a thumb, fifty per centum of daily wages during sixty weeks.

20 For the loss of a first finger, commonly called index finger, fifty per centum of
21 daily wages during thirty-five weeks.

22 For the loss of a second finger, fifty per centum of daily wages during thirty
23 weeks.

24 For the loss of a third finger, fifty per centum of daily wages during twenty
25 weeks.

26 For the loss of a fourth finger, commonly called little finger, fifty per centum
27 of daily wages during fifteen weeks.

28 The loss of the first phalange of the thumb, or of any finger, shall be considered
29 to be equal to the loss of one-half of such thumb, or finger, and compensation shall
30 be [one-half the amounts above specified.] for one-half of the periods of time above
31 specified, and compensation for the loss of one-half of the first phlange shall be for
32 one-fourth of the periods of time above specified.

33 The loss of more than one phalange shall be considered as the loss of the entire
34 finger or thumb; *providing, however,* that in no case shall the amount received for
35 more than one finger exceed the amount provided in this schedule for the loss of a
36 hand.

37 For the loss of a great toe, fifty per centum of daily wages during thirty weeks.

38 For the loss of one of the toes other than a great toe, fifty per centum of daily
39 wages during ten weeks.

40 For the loss of the first phalange of any toe shall be considered to be equal to
41 the loss of one-half of such toe, and compensation shall be one-half of the amount
42 above specified.

43 The loss of more than one phalange shall be considered as the loss of the entire
44 toe.

45 For the loss of a hand, fifty per centum of daily wages during one hundred and
46 fifty weeks.

47 For the loss of an arm, fifty per centum of daily wages during two hundred
48 weeks.

49 For the loss of a foot, fifty per centum of daily wages during one hundred and
50 twenty-five weeks.

51 For the loss of a leg, fifty per centum of daily wages during one hundred and
52 seventy-five weeks.

53 For the loss of an eye, fifty per centum of daily wages during one hundred
54 weeks.

55 The loss of both hands, or both arms, or both feet, or both legs, or both eyes, or
56 of any two thereof, shall constitute total and permanent disability, to be compen-
57 sated according to the provisions of clause (b).

58 In all other cases in this class, or where the usefulness of a member is perma-
59 nently impaired, the compensation shall bear such relation to the amounts stated in
60 the above schedule as the disabilities bear to those produced by the injuries named in
61 the schedule. Should the employer and employee be unable to agree upon the amount
62 of compensation to be paid in cases not covered by the schedule, the amount of com-
63 pensation shall be settled according to the provisions of paragraph twenty hereof.

64 The amounts specified in this clause are all subject to the same limitations as
65 to maximum and minimum as are stated in clause (a).

66 In case of the death of a person from any cause other than the accident, dur-
67 ing the period of payments for permanent injury, the remaining payments shall be
68 paid to his or her dependents, according to the provisions of paragraph twelve of
69 this act, or, if no dependents, the remaining amount due, but not exceeding one hun-
70 dred dollars, shall be paid in a lump sum to the proper person for funeral expenses.

1 2. Paragraph twelve of the said act is hereby amended to read as follows:

2 12. In case of death compensation shall be computed, but not distributed, on
3 the following basis:

4 (1) Actual dependents.

5 [If orphan or orphans, a minimum of twenty-five per centum of wages of
6 deceased, with ten per centum additional for each orphan in excess of two, with
7 a maximum of sixty per centum.

8 If widow alone, twenty-five per centum of wages.

9 If widow and one child, forty per centum of wages.

10 If widow and two children, forty-five per centum of wages.

11 If widow and three children, fifty per centum of wages.

12 If widow and four children, fifty-five per centum of wages.

13 If widow and five children or more, sixty per centum of wages.

14 If widow and father or mother, fifty per centum of wages.

15 If grandparents, grandchildren, or minor, or incapacitated brothers or sisters,
16 twenty-five per centum of wages.]

17 For one dependent, thirty-five per centum of wages.

18 For two dependents, forty per centum of wages.

19 For three dependents, forty-five per centum of wages.

20 For four dependents, fifty per centum of wages.

21 For five dependents, fifty-five per centum of wages.

22 For six or more dependents, sixty per centum of wages.

23 The term "dependents" shall apply to and include any or all of the following
24 who are dependent upon the deceased at the time of accident or death, namely:
25 husband, wife, parents, stepparents, grandparents, children, stepchildren, grandchil-
26 dren, posthumous children, illegitimate children, brothers, sisters, half brothers,
27 half sisters. Legally adopted children shall, in every particular, be considered as
28 natural children; provided, however, that dependency shall be presumed as to a
29 widow who was living with her husband at the time of his decease, and children

30 under the age of eighteen years; stepchildren and illegitimate children shall be
31 presumed to be dependent when they were part of the decedent's household at the
32 time of his death. Every provision of this act applying to one shall be equally
33 applicable to the other.

34 [Compensation in case of death shall be computed on the basis of the fore-
35 going schedule, but shall be distributed according to the laws of this State provid-
36 ing for the distribution of the personal property of an intestate decedent, unless
37 decedent has in fact left a will.]

38 Compensation shall be computed upon the foregoing basis. Distribution shall
39 be made among dependents, if more than one, according to the order of the judge
40 of the court of common pleas, who shall, when applied to for that purpose, deter-
41 mine, upon the facts being presented to him, the proportion to be paid to or on
42 behalf of each dependent according to the relative dependency. Payment on behalf
43 of infants shall be made to the surviving parent, if any.

44 (2) No dependents.

45 Expenses of last sickness and burial, the cost of burial, however, not to exceed
46 [not exceeding two] one hundred dollars.

47 In computing compensation to orphans or other children, only those under [six-
48 teen] eighteen years of age shall be included, and only during the period in which
49 they are under that age, at which time payment on account of such child shall cease;
50 *provided, however,* that payments to such physically or mentally deficient children
51 as are for such reason dependent shall continue during the full term of compensa-
52 tion payment.

53 The compensation in case of death shall be subject to a maximum compensation
54 of ten dollars per week and a minimum of five dollars per week; *provided,* that if at
55 the time of injury the employee receives wages of less than five dollars per week,
56 then the compensation shall be the full amount of such wages per week. This com-
57 pensation shall be paid during three hundred weeks.

58 Compensation under this schedule shall not apply to alien dependents not resi-
59 dents of the United States.

1 3. Paragraph fourteen of the said act is hereby amended to read as follows:

2 14. During the first two weeks after the injury the employer shall furnish
3 reasonable medical and hospital services and medicines, as and when needed, not
4 to exceed [one hundred] fifty dollars in value, unless the employee refuses to allow
5 them to be furnished by the employer.

1 4. Insert clause to be numbered 14 (a), to read as follows:

2 14. (a) Compensation for all classes of injuries shall run consecutively and
3 not concurrently, as follows: First two weeks, medical and hospital services and
4 medicines, as provided in paragraph fourteen. After the first two weeks, compen-
5 sation during temporary disability. Following both, either or none of the above.
6 compensation consecutively for each permanent injury. Following any or all or
7 none of the above, if death results from the accident, expenses of burial. Follow-
8 ing which compensation to dependents, if any. In no case shall the total number
9 of weekly payments be more than four hundred.

1 5. Paragraph twenty of the said act is hereby amended to read as follows:

2 20. Procedure in case of dispute shall be as follows:

3 Either party may present a petition to said judge setting forth the names and
4 residences of the parties and the facts relating to employment at the time of injury,
5 the injury in its extent and character, the amount of wages received at the time of
6 injury, the knowledge of the employer or notice of the occurrence of said injury,
7 and such other facts as may be necessary and proper for the information of the said
8 judge, and shall state the matter or matters in dispute and the contention of the
9 petitioner with reference thereto. This petition shall be verified by the oath or
10 affirmation of the petitioner. Proceedings on behalf of an infant shall be instituted
11 and executed by a guardian, and payment, if any, shall be made to such guardian.

12 Upon the presentation of such petition the same shall be filed with the clerk of

13 the Court of Common Pleas, and the judge shall by order fix a time and place
14 for the hearing thereof, not less than three weeks after the date of the filing of
15 said petition. A copy of said petition and order shall be served as summons in a
16 civil action and may be served within ~~[four]~~ six days thereafter upon the adverse
17 party. Within seven days after the service of such notice the adverse party shall
18 file an answer to said petition, unless the court for good cause shall grant further
19 time, which shall admit or deny the substantial averments of the petition, and shall
20 state the contention of the defendant with reference to the matters in dispute as dis-
21 closed by the petition. The answer shall be verified in like manner as required for
22 a petition. Within thirty days after the final hearing the judge of the Court of
23 Common Pleas shall file his determination.

24 At the time fixed for hearing or any adjournment thereof the said judge shall
25 hear such witnesses as may be presented by each party, and in a summary manner
26 decide the merits of the controversy. This determination shall be filed in writing
27 with the clerk of the Common Pleas Court, and judgment shall be entered
28 thereon in the same manner as in causes tried in the Court of Common Pleas, and
29 shall contain a statement of facts as determined by said judge. Subsequent pro-
30 ceedings thereon shall only be for the recovery of moneys thereby determined to be
31 due, provided that nothing herein contained shall be construed as limiting the juris-
32 diction of the Supreme Court to review questions of law by certiorari. Costs may
33 be awarded by said judge in his discretion, and when so awarded the same costs
34 shall be allowed, taxed and collected as are allowed, taxed and collected for like
35 services in the Common Pleas Court.

36 No agreement between the parties for a lesser sum than that which may be
37 determined by the judge of the Court of Common Pleas to be due, shall operate as
38 a bar to the determination of a controversy upon its merits, or to the award of a
39 larger sum, if it shall be determined by the said judge that the amount agreed
40 upon is less than the injured employee or his dependents are properly entitled to
41 receive.

1 6. Paragraph twenty-one of this act is hereby amended to read as follows:

2 21. [The amounts payable periodically as compensation may be commuted to
3 one or more lump sum payments by the judge of the Court of Common Pleas
4 having jurisdiction as set forth in the preceding paragraph, upon the application
5 of either party, in his discretion, provided the same be in the interest of justice.
6 Unless so approved, no compensation payments shall be commuted.]

7 The compensation herein provided may be commuted by said Court of Com-
8 mon Pleas, at its present value when discounted at five per centum simple interest,
9 upon application of either party, with due notice to the other, if it appear that such
10 commutation will be for the best interest of the employee or the dependents of the
11 deceased employee, or that it will avoid undue expense or undue hardship to either
12 party, or that such employee or dependent has removed or is about to remove from
13 the United States, or that the employer has sold or otherwise disposed of the
14 greater part of his business or assets.

15 In determining whether the commutation asked for will be for the best interest
16 of the employee or the dependents of the deceased employee, or that it will avoid
17 undue expense or undue hardship to either party, the judge of the Court of Com-
18 mon Pleas will constantly bear in mind that it is the intention of this act that the
19 compensation payments are in lieu of wages, and are to be received by the injured
20 employee or his dependents in the same manner in which wages are ordinarily paid.
21 Therefore, commutation is a departure from the normal method of payment and is
22 to be allowed only when it clearly appears that some unusual circumstances war-
23 rant such a departure. Commutation shall not be allowed for the purpose of
24 enabling the injured employee, or the dependents of a deceased employee, to sat-
25 isfy a debt, or to make payment to physicians, lawyers, or any other persons.

26 When any proceedings have been taken under the provisions of paragraph
27 twenty or paragraph twenty-one of this act, the judge of the Court of Common

28 Pleas shall, as a part of his determination and order, either for payment or for
29 commutation of payment, settle and determine the amount of compensation to be
30 paid by the injured employee or his dependents, on behalf of whom such proceed-
31 ings are instituted, to his legal adviser or advisers, and it shall be unlawful for
32 any lawyer, or other person acting in that behalf, to ask for, contract for or re-
33 ceive any larger sum than the amount so fixed; and in the order determining weekly
34 payments where no commutation is made, the judge shall also determine the amount
35 to be paid per week from the compensation payment on account of the legal fee
36 thus awarded, and it shall be unlawful for the legal adviser, or other person acting
37 in that behalf, to ask for, contract for or receive a larger sum per week than the
38 allowance thus determined. Violation of the restrictions contained in this clause
39 shall constitute contempt of court and shall be punished accordingly.

40 An agreement or award of compensation may be modified at any time by a sub-
41 sequent agreement, or at any time after one year from the time when the same
42 became operative, it may be reviewed upon the application of either party on the
43 ground that the incapacity of the injured employee has subsequently increased or
44 diminished. In such case the provisions of paragraph seventeen with reference to
45 medical examination shall apply.

1 7. Insert a new paragraph to be numbered 21 (a), to read as follows:

2 21. (a) At any time after the entry of the award, a sum equal to all future
3 installments of compensation may (where death or the nature of the injury renders
4 the amount of future payments certain) by leave of court, be paid by the employer
5 to any savings bank, trust company or life insurance company in good standing and
6 authorized to do business in this State and having an office in the county in which
7 the award was entered, and such sum, together with all interest thereon, shall there-
8 after be held in trust for the employee or the dependents of the employee, who shall
9 have no further recourse against the employer. The payment of such sum by the

10 employer, evidenced by the receipt of the trustee noted upon the docket of the
11 clerk of the court, shall operate as a satisfaction of said award as to the employer.
12 Payments from said fund shall be made by the trustee in the same amounts and
13 at the same times as are herein required of the employer until said fund and in-
14 terest shall be exhausted. In the appointment of the trustee, preference shall be
15 given, in the discretion of the court, to the choice of the employee or the dependents
16 of the deceased employee. The expense of administration of such trust shall be,
17 fixed by the court and paid by the employer.

✓ 1 8. Paragraph twenty-three of this act is hereby amended to read as follows:

2 23. For the purposes of this act, willful negligence shall consist of (1) deliber-
3 ate act or deliberate failure to act; or (2) such conduct as evidences reckless in-
4 difference to safety; or (3) intoxication, operating as the proximate cause of in-
5 jury.

6 Wherever in this act the singular is used the plural shall be included; where
7 the masculine gender is used, the feminine and neuter shall be included.

8 Employer is declared to be synonymous with master and includes natural per-
9 sons, partnerships and corporations; employee is synonymous with servant and in-
10 cludes all natural persons who perform service for another for financial considera-
11 tion, exclusive of casual employments.

12 Amputation between the elbow and the wrist shall be considered as the equiva-
13 lent of the loss of a hand, and amputation between the knee and the ankle shall be
14 considered as the equivalent of the loss of a foot.

15 No agreement, composition or release of damages made before the happening
16 of any accident, except the agreement defined in section two of this act, shall be
17 valid or shall bar a claim for damages for the injury resulting therefrom, and any
18 such agreement, other than that defined in section two herein, is declared to be
19 against the public policy of this State. The receipt of benefits from any associa-
20 tion, society or fund to which the employee shall have been a contributor shall not

21 bar the recovery of damages by action at law or the recovery of compensation under
22 section two hereof.

23 Where a third person or corporation is liable to the employee or his dependents
24 for an injury or death, the existence of a right of compensation from the employer
25 under this statute shall not operate as a bar to the action of the employee or his
26 dependents, nor be regarded as establishing a measure of damage therein. How-
27 ever, in event that the employee or his dependents shall recover from the said
28 third person or corporation, a sum equivalent to or greater than the total compen-
29 sation payments for which the employer is liable under this statute, the employer
30 shall be released thereby from the obligation of compensation. If, however, the
31 sum so recovered from the third person or corporation is less than the total of com-
32 pensation payments, the employer shall be liable only for the difference. The obli-
33 gation of the employer under this statute to make compensation shall continue until
34 the payment, if any, by such third person or corporation is made. Such employer
35 shall file with the third person or corporation so liable, at any time prior to pay-
36 ment, a statement of the compensation agreement or award between himself and
37 his employee, or the dependents of the employee, and the employer shall thereafter
38 be entitled to receive from such third person or corporation, upon the payment of
39 any amount in release or in judgment by the third person or corporation on account
40 of his or its liability to the injured employee or his dependents, a sum equivalent
41 to the amount of compensation payments which the employer has theretofore paid
42 to the injured employee or his dependents, which payments shall be deducted by the
43 third person or corporation from the sum paid in release or judgment to the injured
44 employee or his dependents.

45 Wherever in section two of this act the term "wages" is used, it shall be con-
46 strued to mean the money rate at which the service rendered is recompensed under

47 the contract of hiring in force at the time of the accident, and shall not include
48 gratuities received from the employer or others, nor shall it include board, lodging
49 or similar advantages received from the employer, unless the money value of such
50 advantages shall have been fixed by the parties at the time of hiring. Where prior
51 to the accident the rate of wages is fixed by the output of the employee, his weekly
52 wages shall be taken to be six times his average daily earnings for a working day
53 of ordinary length, excluding overtime. This rate of weekly wages shall be calcu-
54 lated by dividing the total value of the employee's output during the actual num-
55 ber of full working days during the preceding six months, by the number of days
56 the workman was actually employed. All parts of this calculation shall refer to em-
57 ployment by the same employer.

1 9. All acts and parts of acts inconsistent herewith are hereby repealed, and this
2 act shall take effect immediately.

Journal of the Senate

TUESDAY, MARCH 11, 1913.

505

Answering your inquiry specifically, I think it is your constitutional right to preside at sessions of the Senate and vote upon bills, &c., because you are the Senator from the county of Hudson, and have been duly selected as President of the Senate, and in virtue of the latter office, are now exercising the functions of the office of Governor. In case you should resign the office of Senator, you would cease to be President of the Senate, and the powers, duties and emoluments of the office of Governor would devolve upon the Speaker of the House of Assembly, for the time being.

The foregoing, I think, answers, fully, your inquiry.

Very truly yours,

EDMUND WILSON,
Attorney-General.

Mr. Johnson moved that the foregoing communication be spread in full in the Journal.

Which was agreed to.

Mr. McGinnis, Acting Chairman of the Committee on Corporations, reported

Senate Bill No. 125, entitled "An act to amend an act entitled 'An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,'" approved April fourth, one thousand nine hundred and eleven,

With the following committee amendments, which were read and adopted on the motion of Mr. Edge:

On page three, line fifty-eight, after the word "member", add "or any physical function".

On page five, line thirty-two, after the word "one", add the word "class".

On page five, line thirty-three, after the word "other", add a new sentence, as follows: "Should any dependent of a deceased employee die during the period covered by such weekly payments, or should the widow of a deceased employee remarry during such period, the right of such dependent or of such widow to compensation under this section shall cease."

On page six, line seven, after the word "expenses", add the words "of last sickness and".

On page seven, line twenty-nine, after the word "judgment", add a new sentence, as follows: "The employer may once every

month file receipt of payment, verified by affidavit that the receipts are accurate and true, with the clerk of the court, which shall be entered in satisfaction of the judgment to the extent of such payments."

On page twelve, line fifty-seven, insert a new paragraph, as follows:

"In case of personal injuries or death, all claims for compensation on account thereof shall be forever barred unless within one year after the accident the parties shall have agreed upon the compensation payable under this act, or unless within one year after the accident one of the parties shall have filed a petition for adjudication of compensation as provided herein."

Mr. Low, Chairman of the Committee on Banks and Insurance, reported

Senate Bill No. 246, entitled "A further supplement to the act entitled 'An act to provide for the regulation and incorporation of insurance companies and to regulate the transaction of insurance business in this State,'" approved April third, one thousand nine hundred and two,

Favorably, without amendment.

Mr. Low, Chairman of the Committee on Education, reported

Senate Bill No. 225, entitled "A supplement to an act entitled 'An act to establish a thorough and efficient system of free public schools, and to provide for the management, support and maintenance thereof,'" approved October nineteenth, one thousand nine hundred and three,

And

Senate Bill No. 237, entitled "An act to provide for instructions in preventing accidents,"

Favorably, without amendment.

Senate Bill No. 163, entitled "A supplement to an act entitled 'An act to establish a thorough and efficient system of free public schools, and to provide for the maintenance, support and management thereof,'" approved October nineteenth, one thousand nine hundred and three,

Was taken up and read a third time.

Upon the question "Shall this Senate bill pass?" it was decided as follows:

SENATE, No. 10

(P. L. 1911, Chap. 95, page 144; P. L. 1913, Chap. 174, page 311; Comp. Stat. (First Supp.) page 1651.)

STATE OF NEW JERSEY

INTRODUCED JANUARY 20, 1919.

By Mr. HAMMOND.

Referred to Committee on Labor, Industries, and Social Welfare.

AN ACT to amend an act entitled "An act to amend an act entitled 'An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, one thousand nine hundred and eleven," which amendment was approved April first, one thousand nine hundred and thirteen.

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

1 1. Paragraph twenty-three of the act to which this is an amendment is
2 hereby amended to read as follows:

3 23. For the purposes of this act wilful negligence shall consist of (1) delib-
4 erate act or deliberate failure to act; or (2) such conduct as evidences reckless
5 indifference to safety; or (3) intoxication, operating as the proximate cause of
6 injury.

7 Wherever in this act the singular is used the plural shall be included; where
8 the masculine gender is used the feminine and neuter shall be included.

9 Employer is declared to be synonymous with master and includes natural per-
10 sons, partnerships and corporations; employee is synonymous with servant and in-
11 cludes all natural persons who perform service for another for financial considera-
12 tion, exclusive of casual employments.

13 Amputation between the elbow and the wrist shall be considered as the
14 equivalent of the loss of a hand, and amputation between the knee and the ankle
15 shall be considered as the equivalent of the loss of a foot.

16 No agreement, imposition or release of damages made before the happen-
17 ing of any accident, except the agreement defined in section two of this act, shall
18 be valid or shall bar a claim for damages for the injury resulting therefrom, and
19 any such agreement, other than that defined in section two herein, is declared to be
20 against the public policy of this State. The receipt of benefits from any association,
21 society or fund to which the employee shall have been a contributor shall not bar
22 the recovery of damages by action at law or the recovery of compensation under
23 section two hereof.

24 [Where a third person or corporation is liable to the employee or his depend-
25 ents for an injury or death, the existence of a right of compensation from the
26 employer under this statute shall not operate as a bar to the action of the employee
27 or his dependents, nor be regarded as establishing a measure of damage therein.
28 However, in event that the employee or his dependents shall recover from the said
29 third person or corporation a sum equivalent to or greater than the total compen-
30 sation payments for which the employer is liable under this statute, the employer
31 shall be released thereby from the obligation of compensation. If, however, the
32 sum so recovered from the third person or corporation is less than the total of
33 compensation payments, the employer shall be liable only for the difference. The
34 obligation of the employer under this statute to make compensation shall continue
35 until the payment, if any, by such third person or corporation is made. Such
36 employer shall file with the third person or corporation so liable, at any time prior
37 to payment, a statement of the compensation agreement or award between himself
38 and his employee, or the dependents of the employee, and the employer shall there-

39 after be entitled to receive from such third person or corporation, upon the pay-
40 ment of any amount in release or in judgment by the third person or corporation
41 on account of his or its liability to the injured employee or his dependents, a
42 sum equivalent to the amount of compensation payments which the employer has
43 theretofore paid to the injured employee or his dependents, which payments shall
44 be deducted by the third person or corporation from the sum paid in release or
45 judgment to the injured employee or his dependents.] Where a third person or
46 corporation is liable to the employee, his personal representatives or dependents,
47 for an injury or death for which the employer is liable under this statute, the exist-
48 ence of a right of compensation from the employer hereunder shall not operate as
49 a bar to an action against such third person or corporation, nor be regarded as
50 establishing a measure of damage therein, but the sole right to enforce the liability
51 of such third person or corporation by action at law or otherwise shall without
52 any act on the part of the employer or others immediately upon the happening of
53 the accident pass to the employer, who may prosecute or adjust and settle the same
54 in his name or in the name of the employee, his personal representative and depend-
55 ents, unless before final settlement has been made by the employer, the employee,
56 or in case of death his personal representative and dependents shall obtain control
57 over the enforcement of the liability of such third person or corporation by waiv-
58 ing and renouncing all right to receive further compensation from such employer
59 and paying to such employer a sum sufficient to reimburse him for what has been
60 paid under this statute and also to cover such reasonable expenses and counsel
61 fees as shall have theretofore been incurred by the employer or his insurance carrier
62 in connection with claim or suit against third persons or corporations on account
63 of the accident causing the injury or death: *provided, however,* that any recovery
64 by the employer against such third person or corporation in excess of the employer's
65 liability under this statute and the reasonable expenses and counsel fees incurred by
66 the employer or his insurance carrier in connection with claim or suit against third
67 persons or corporations on account of the accident causing the injury or death,

68 shall be paid forthwith upon its receipt to the employee or his personal repre-
 69 sentative.

70 Wherever in section two of this act the term "wages" is used, it shall be
 71 construed to mean the money rate at which the service rendered is recompensed
 72 under the contract of hiring in force at the time of the accident and shall not in-
 73 clude gratuities received from the employer or others, nor shall it include board,
 74 lodging or similar advantages received from the employer, unless the money value
 75 of such advantages shall have been fixed by the parties at the time of hiring.
 76 Where prior to the accident the rate of wages is fixed by the output of the em-
 77 ployee, his weekly wages shall be taken to be six times his average daily earnings
 78 for a working day of ordinary length, excluding overtime. This rate of weekly
 79 wages shall be calculated by dividing the total value of the employee's output
 80 during the actual number of full working days during the preceding six months
 81 by the number of days the workman was actually employed. All parts of this
 82 calculation shall refer to employment by the same employer.

83 In case of personal injuries or death all claims for compensation on account
 84 thereof shall be forever barred unless within one year after the accident the parties
 85 shall have agreed upon the compensation payable under this act, or unless within
 86 one year after the accident one of the parties shall have filed a petition for adjudi-
 87 cation of compensation as provided herein.

1 2. This act shall not apply to accidents happening before its passage.

1 3. All acts and parts of acts inconsistent herewith are hereby repealed, and
 2 this act shall take effect immediately.

STATEMENT.

The amendment concerns those cases where even though the tort of a third per-
 son or corporation caused the injury or death, the employer is liable for compensation.
 Its purpose is to put it beyond the power of the employee or his dependents to settle

with the third person or corporation at fault for less than the employer is liable to pay as compensation. By the amendment the power to enforce liability of the third person or corporation is placed in the employer, but the employee or dependents may obtain this right by waiving right to hold the employer for compensation and reimbursing the employer for certain expenditures already made. Anything recovered by the employer in excess of compensation and reasonable expenses is to go to the employee or his dependents.

Was taken up and read a third time.

Upon the question, "Shall this Senate bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Bright, Brown, Case, Conrad, Edwards, Haines, Hammond, Mackay, Martens, Runyon (President), Smith, Sturgess, Wells, Whitney—14.

In the negative—None.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same and requests its concurrence therein.

Second Committee Substitute for Senate Bills Nos. 10 and 12, entitled "An act to amend an act entitled 'An act prescribing the liability of an employer, to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder,'" approved April fourth, one thousand nine hundred and eleven,

Was taken up on third reading.

There being no objection, the rules were suspended, on motion of Mr. Hammond.

Mr. Hammond offered the following amendments, which were read and adopted:

Amend paragraph 20, page 9, line 8, by inserting after the word "refusal" in said line the words "or neglect".

Amend paragraph 21, subdivision E, page 10, line 32, by inserting after the word "bureau" the words "or the said judge".

Amend paragraph 23, subdivision f, page 12, line 49, by striking out after the syllable "ents" all of the remainder of line 49 and all of the subsequent lines of said subdivision up to and including line 64, the same being the end of said subdivision.

Amend paragraph 23, subdivision g, page 12, line 68, by inserting after the word "lodging" the words "when furnished by the employer as part of the wages".

Amend paragraph 23, subdivision h, page 13, line 90, by striking out after the word "unless" the remainder of said line and all of lines 91 and 92 and inserting in lieu thereof the following: "within one year after the accident one of the parties shall have filed a petition for adjudication of compensation as

d time.

is Senate bill pass?" it was de-

Conrad, Edwards, Haines, Ham-
ms, Runyon (President), Smith,
ey—14.

y the President to carry said bill
inform that body that the Senate
s its concurrence therein.

e for Senate Bills Nos. 10 and
n act entitled 'An act prescribing
make compensation for injuries
course of employment, establish-
mpensation and regulating pro-
liability and compensation there-
, one thousand nine hundred and

5.
rules were suspended, on motion

llowing amendments, which were

, line 8, by inserting after the
vords "or neglect".

ision E, page 10, line 32, by in-
the words "or the said judge".
vision f, page 12, line 49, by
"ents" all of the remainder of
t lines of said subdivision up to
eing the end of said subdivision.
sion g, page 12, line 68, by in-
g" the words "when furnished
ages".

ision h, page 13, line 90, by
less" the remainder of said line
nserting in lieu thereof the fol-
the accident one of the parties
djudication of compensation as

provided herein; but any judgment duly rendered or any agree-
ment voluntarily entered into by the parties may be enforced in
the manner provided by law for actions or judgments or con-
tracts, subject, however, to the limitations by such law pre-
scribed."

Senate Bill No. 149, entitled "An act to authorize towns and
villages to purchase fire engines and other apparatus for the
suppression of fires, and to provide for the payment of the cost
thereof,"

Was taken up and read a third time.

Upon the question, "Shall this Senate bill pass?" it was de-
cided as follows:

In the affirmative were—

Messrs. Bright, Brown, Case, Conrad Edwards, Haines, Ham-
mond, Mackay, Martens, Runyon (President), Smith,
Sturgess, Wells, Whitney—14.

In the negative—None.

The Secretary was directed by the President to carry said bill
to the House of Assembly and inform that body that the Senate
has passed the same, and requests its concurrence therein.

Senate Bill No. 119, entitled "An act to amend an act entitled
'An act concerning unpaid taxes, assessments and other municip-
al charges on real property, and providing for the collection
thereof by the creation and enforcement of liens thereon' (Revi-
sion of 1918), approved March fourth, one thousand nine hun-
dred and eighteen,"

Was taken up and read a third time.

Upon the question, "Shall this Senate bill pass?" it was de-
cided as follows:

In the affirmative were—

Messrs. Bright, Brown, Conrad, Edwards, Haines, Hammond,
Mackay, Runyon (President), Smith, Sturgess, Wells,
Whitney—12.

In the negative—None.

The Secretary was directed by the President to carry said bill
to the House of Assembly and inform that body that the Senate
has passed the same, and requests its concurrence therein.

Mr. Case, Chairman of the Committee on Judiciary, reported

Journal of the Senate

MONDAY, MARCH 17, 1919.

379

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, and requests its concurrence therein.

Committee Substitute for Senate Bill No. 29, entitled "An act to amend an act entitled 'An act to provide for the permanent improvement and maintenance of public roads in this State (Revision of 1912).'"

Was taken up and read a third time.

Upon the question, "Shall this Senate bill pass?" it was decided as follows:

In the affirmative were—

Messrs. Ackerson, Barber, Bright, Brown, Case, Fithian, Haines, Hammond, Martens, Pilgrim, Runyon (President), Smith, Wells, Whitney—13.

In the negative—None.

The Secretary was directed by the President to carry said bill to the House of Assembly and inform that body that the Senate has passed the same, and requests its concurrence therein.

Second Committee Substitute for Senate Bills Nos. 10 and 12, entitled "An act to amend an act entitled 'An act prescribing the liability of an employer, to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder,'" approved April fourth, one thousand nine hundred and eleven,

Was taken up on third reading.

Mr. Case asked unanimous consent to amend said bill on third reading.

Which was agreed to.

Mr. Case offered the following amendment, which was read and adopted:

Amend page 12, line 70, by striking out the word "seven" and inserting "five" in lieu thereof.

Said bill, as amended, was then read a third time.

Upon the question, "Shall this Senate bill pass?" it was decided as follows:

rad, Ed-
ens, Pil-

ry said bill
the Senate
in.

ct entitled
are river
Delaware
aid limits
y-seventh,

it was de-

onrad, Ed-
, Pilgrim,

ry said bill
the Senate
ein.

act entitled
aries of the
1 February
ve,"

it was de-

onrad, Ed-
artens, Pil-

34:15 - 40

Legislative History for L. 1931, c. 279

L. 1931, c. 279, Senate bill 298

Not amended during passage.

Sponsor statement on original bill:

The purpose of these amendments is as follows:
To protect an employee with respect to giving notice of a hernia when the plant may be shut down.
To clarify and make certain when a claim may be reopened.
To define more certainly the minimum compensation week.

2007
Do not remove From Library

RP - 12/97

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1931

By Mr. REEVES

Referred to Committee on Judiciary

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

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

1 1. Paragraph eleven (x) of the act referred to in the title of this act is hereby
2 amended to read as follows:

3 (x) Inguinal Hernia is a disease which ordinarily develops gradually, being
4 very rarely the result of an accident. Where there is real traumatic hernia resulting
5 from the application of force directly to the abdominal wall, either puncturing or
6 tearing the wall, compensation will be allowed. All other cases will be considered
7 as either congenital or slow development and not compensable, being a disease rather
8 than an accidental injury; unless conclusive proof is offered that the hernia was
9 immediately caused by such sudden effort or severe strain that, first the descent of
10 the hernia immediately followed the cause; second, that there was severe pain in
11 the hernial region; third, that there was such prostration that the employee was
12 compelled to cease work immediately; fourth, that the above facts were of such
13 severity that the same was noticed by the claimant and communicated to the employer
14 within twenty-four hours after the occurrence of the hernia, and days when the
15 business is not in operation, such as Sundays, Saturdays or holidays, shall be
16 excluded from this twenty-four hour period; fifth, that there was such physical

17 distress that the attendance of a licensed physician was required within twenty-
18 four hours after the occurrence of the hernia. In the case of hernia as above defined,
19 the provisions of paragraph thirteen, fourteen and eleven (a) shall apply, until
20 such time as the employee is able to resume some kind of work with the aid of a
21 truss or other mechanical appliance. If the employee refuses to permit of an opera-
22 tion, the employer shall meet the requirements above specified, pay the reasonable
23 costs of the truss or other appliance found necessary, and also pay compensation
24 for twenty weeks, following which the obligation shall cease and terminate, unless
25 death results from the hernia, in which case the provisions of paragraph twelve shall
26 apply. However, if the employee shall elect to undergo an operation, by a physician
27 selected by the employer, the employer shall meet all the expenses incident to such
28 operation and recovery, not in excess of one hundred and fifty dollars, together
29 with compensation as provided in paragraph eleven (a) during the period of dis-
30 ability prior to and following the operation, subject to the provisions of paragraph
31 thirteen. If the employee refuses the services of the physician selected by the
32 employer, preferring one of his own selection, the employer shall be relieved of
33 obligations concerning medical expense due to the operation and recovery, but shall
34 pay compensation during the prior and resulting periods of disability. If death
35 results from the hernia or operation, the provisions of paragraph twelve shall apply.

1 2. Paragraph twenty-one (f) is hereby amended to read as follows:

2 (f) An agreement [or award of] for compensation may be modified at any
3 time by a subsequent agreement, or a formal award reviewed within two years
4 from the date when the injured person last received a payment, upon the application
5 of either party on the ground that the incapacity of the injured employee has
6 subsequently increased, or reviewed at any time on the ground that the disability has
7 diminished. In such case the provisions of paragraph seventeen with reference to
8 medical examination shall apply.

1 3. Paragraph twenty-three (f) is hereby amended to read as follows:

2 (f) Where a third person or corporation is liable to the employee or his
3 dependents for an injury or death, the existence of a right of compensation
4 from the employer under this statute shall not operate as a bar to the action of
5 the employee or his dependents, nor be regarded as establishing a measure of
6 damage therein. However, in event that the employee or his dependents shall

7 recover from the said third person or corporation, a sum equivalent to or greater
8 than the total compensation payments for which the employer is liable under this
9 statute, the employer shall be released thereby from the obligation of compensation.
10 If, however, the sum so recovered from the third person or corporation is less
11 than the total of compensation payments, the employer shall be liable only for the
12 difference. The obligation of the employer under this statute to make compensa-
13 tion shall continue until the payment, if any, by such third person or corporation
14 is made. Such employer shall file with the third person or corporation so liable,
15 at any time prior to payment, a statement of the compensation agreement or
16 award between himself and his employee, or the dependents of the employee, and
17 the employer shall thereafter be entitled to receive from such third person or cor-
18 poration, upon the payment of any amount in release or in judgment by the third
19 person or corporation on account of his or its liability to the injured employee or
20 his dependents, a sum equivalent to the medical expenses incurred and the amount
21 of compensation payments which the employer has heretofore paid to the injured
22 employee or his dependents, which payments shall be deducted by the third persons
23 or corporation from the sum paid in release or judgment to the injured employee
24 or his dependents.

25 When an injured employee or his dependent fails within six months of the
26 accident, to take legal action against a third party responsible for the injury, or
27 accepts a settlement for less than the compensation obligation of the employer, the
28 employer or his insurance carrier is hereby authorized to proceed legally against
29 such third party; provided, however, if the amount secured by the employer or
30 carrier is in excess of the employer's obligation and the expense of suit, the balance
31 shall be paid to the employee or the dependent.

1 4. Paragraph twenty-three (g) is hereby amended to read as follows:

2 (g) Whenever in section two of this act the term "wages" is used it shall
3 be construed to mean the money rate at which the service rendered is recom-
4 pensed under the contract of hiring in force at the time of the accident, and
5 shall not include gratuities received from the employer or others. Board and
6 lodging when furnished by the employer as part of the wages shall be included
7 and valued at five dollars per week, unless the money value of such advantages

8 shall have been otherwise fixed by the parties at the time of hiring. Where prior
 9 to the accident, the rate of wages is fixed by the output of the employee, the
 10 daily wage shall be calculated by dividing the number of days the workman was
 11 actually employed into the total amount the employee earned during the preced-
 12 ing six months, or so much thereof as shall refer to employment by the same
 13 employer. Where the rate of wages is fixed by the hour, the daily wage shall be
 14 found by multiplying the hourly rate by the customary number of working hours
 15 constituting an ordinary day in the character of the work involved. In any case
 16 the weekly wage shall be found by multiplying the daily wage by five [and one-
 17 half] or if the employee worked a greater proportion of the week regularly, then
 18 by five and one-half, six, six and one-half or seven, according to the customary
 19 number of working days constituting an ordinary week in the character of work
 20 involved. Five days shall constitute a minimum week.

1 5. Paragraph twenty-three (h) is hereby amended to read as follows:

2 (h) In case of personal injury or death all claims for compensation on
 3 account thereof shall be forever barred unless a petition is filed in duplicate with
 4 the secretary of the Workmen's Compensation Bureau, at the State House, in
 5 Trenton, as prescribed in paragraph five of the supplement to this act, approved
 6 February twenty-eight, one thousand nine hundred and eighteen, as Chapter one
 7 hundred and forty-nine, as later amended. [within one year after the date on which
 8 the accident occurred, or in case an agreement of compensation has been made
 9 between such employer and such claimant, then within one year after the failure
 10 of the employer to make payment pursuant to the terms of such agreement; or
 11 in case a part of the compensation has been paid by such employer, then within
 12 one year after the last payment of compensation.]

1 6. This act shall take effect immediately.

STATEMENT

The purpose of these amendments is as follows:

To protect an employee with respect to giving notice of a hernia when the plant
 may be shut down.

To clarify and make certain when a claim may be reopened.

To define more certainly the minimum compensation week.

Laws of 1936, chapter 162

Assembly bill 178, introduced February 10, 1936. Original bill with sponsor statement enclosed. Committee Substitute adopted (enclosed). Amended during passage. See Assembly Minutes, p. 715 (enclosed).

Included is information from a previous legislative history checklist page.

For background see:

J331.8 Workmen's compensation (the New Jersey experience),
B51 by Monroe Berkowitz.

J331.825 Three years under New Jersey workmen's compensation
A512 law, by the American Association for Labor
Legislation Social Insurance Committee.

Hearings and reports:

This is a selective list of those reports which appear to be related to these laws and were presented close to the time of time of enactment. For additional reports and information on workmen's compensation see the card catalog under New Jersey - Workmen's Compensation.

974.90 Report to the Commissioner of Labor...
E55 New Jersey Workmen's Compensation advisory commission.
1931

974.90 Report...April, 1935
E55 N.J. Joint commission to study workmen's compensation
1935 act and practices.

974.90 Report...April 12,
E55 N.J. Joint commission to study workmen's compensation
1935b act and practices.

974.90 Report of study of New Jersey Workmen's Compensation Act
E55 with recommendation.
1951 Nelson, Harry A.

DEPOSITORY COPY
Do Not Remove From Library

L. 1936, c. 160

~~R.S. 34:15-10~~

ASSEMBLY, No. 178

(P. L. 1931, Chap. 279)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 10, 1936

By Mr. ARTASERSE

Referred to Committee on Labor, Industry and Social Welfare

AN ACT to amend an act entitled "An act to amend an act entitled 'An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, one thousand nine hundred and eleven," approved April twenty-seventh, one thousand nine hundred and thirty-one.

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

1 1. Paragraph 23 (f) of the act referred to in the above title of this act
2 is hereby amended to read as follows:

3 (f) Where a third person or corporation is liable to the employee or
4 his dependents for an injury or death, the existence of a right of compensa-
5 tion from the employer under this statute shall not operate as a bar to the
6 action of the employee or his dependents, nor be regarded as establishing
7 a measure of damage therein. However, in the event that the employee or
8 his dependents shall recover from the said third person or corporation, a
9 sum equivalent to or greater than the total compensation payments, exclu-
9 sive of expenses of suit and attorney's fee, for which the employer is liable
10 under the statute, the employer shall be released thereby from the obliga-
11 tion of compensation. If, however, the sum so recovered from the third per-

12 son or corporation, exclusive of expenses of suit and attorney's fee, is less
13 than the total of compensation payments, the employer shall be liable only
14 for the difference. The obligation of the employer under this statute to
16 make compensation shall continue until the payment, if any, by such third
17 person or corporation is made. Such employer shall file with the third per-
18 son or corporation, so liable, at any time prior to payment, a statement of
19 the compensation agreement or award between himself and his employee or
20 the dependents of the employee, and the employer shall thereafter be entitled
21 to receive from such third person or corporation, upon the payment of any
22 amount in release or in judgment by the third person or corporation on ac-
23 count of his or its liability to the injured employee or his dependents a sum
24 equivalent to the medical expenses incurred and the amount of compensation
25 payments which the employer has heretofore paid to the injured employee
26 or his dependents out of that part of the amount about to be so paid by the
27 third person or corporation, remaining after deducting the employee's ex-
28 penses of suit and/or attorney's fee, which payments shall be deducted by
29 the third person or corporation from the sum paid in release or judgment
30 to the injured employee or his dependents.

31 When an injured employee or his dependent fails within six months of
32 the accident, to take legal action against a third party responsible for the
33 injury, or accepts a settlement for less than the compensation obligation of
34 the employer, the employer or his insurance carrier is hereby authorized
35 to proceed legally against such third party; *provided, however*, if the
36 amount secured by the employer or carrier is in excess of the employer's
37 obligation and the expense of suit, the balance shall be paid to the employee
38 or the dependents. Where the employer files with the third person or cor-
39 poration the aforementioned statement for reimbursement, the said third
40 person or corporation shall, before payment, notify said injured employee
41 or his dependents of the same and the said injured employee or his de-
42 pendents shall then file with said third person or corporation a statement of
43 the amount of the expenses of suit and/or attorney's fee which amount or

44 amounts shall be paid by the said third person or corporation to the said
 45 injured person or his dependents, together with any sum, if any, remain-
 46 ing from the balance of said sum paid in release or judgment, after the em-
 47 ployer has been reimbursed as herein stated.

1 2. This act to take effect immediately .

Sponsor

STATEMENT

to A 178, L 193 b, c 279

Under this section, when an injured employee sustains an injury arising out of and in the course of his employment occasioned by a third party, he is entitled to not only the compensation awarded him as an employee of his employer, but he also has the right to institute a common law action against the person who caused his injury. If in the suit against the third person who caused his injury, the employee obtains a judgment equal to or greater than the amount of the compensation payments, then the employer is under no obligation to pay the employee compensation, or if an employee has already received his compensation, the employer may recover the amount of compensation payments made to the employee, out of the judgment awarded the employee against the third party.

In order for the injured employee to institute suit against the third person, it is necessary for him or her to engage counsel and expend certain moneys for the institution of the same. These moneys naturally come out of the judgment awarded. However, in a situation where the gross amount of the judgment award is equal or even greater than the compensation awarded the injured employee or his dependents, although the net amount received by the employee or his dependents after the attorney's fees are deducted is less than the amount of the compensation award, the employer is nevertheless released from paying any further compensation, and is entitled to be reimbursed for the moneys already paid by him, notwithstanding the injured employee or dependents must pay the costs of suit and attorney's fees.

To better explain this, as the present law exists, an example would be apropos:

"A" works for "B" and while in the course of his employment is injured through the negligence of "C". "A" receives compensation from "B" in the gross sum of \$5,000.00. "A", believing that he would obtain a greater sum by instituting a Common Law action against "C", and at the same time making it possible for "B", his employer, to be reimbursed for the compensation awarded against him, engages a lawyer and institutes a common law action against "C".

The lawyer is retained on a contingent basis of 33 $\frac{1}{3}$ per centum. Moneys are advanced to the extent of \$50.00 to institute the suit. The Common Law Action is tried and the jury awards a judgment against "C" of only \$5,000.00. "B", the employer, immediately serves notice on "C" that having paid "A" \$5,000.00 in compensation, he will look to "C" for the reimbursement of the full amount of the judgment awarded against him in favor of "A".

In this connection, the said moneys advanced by "A" and the services rendered by "A's" attorney can never be paid, because under the existing law "B", the employer, has the right to demand the full amount of the compensation awarded from the third person irrespective of the disbursements.

However, in the second paragraph of the same section it is provided that when an injured employee or his dependents fail within six months of the accident to take legal action against a third party responsible for the injury * * * the employer or his insurance carrier is authorized to proceed legally against such third party, provided, however, if the amount secured by the employer or carrier is in excess of the employer's obligation and the expenses of suit, the balance shall be paid to the employee or the dependents.

You will readily see where the employee takes the initiative to institute suit against a third party, he must personally stand the costs of suit and attorney's fees and assume the risk of losing whatever advantage he obtained under the Workmen's Compensation Act, although he was indirectly assisting his employer to be reimbursed. Whereas, where the employee refused or failed to take action against a third person, the employer is given the privilege of instituting suit against said third person and in that judgment award the em-

ployer has the right to deduct the expenses of suit, leaving the balance only over and above the compensation award, to be paid to the injured employee or his dependents. This clearly shows an unjust situation and the purpose of this amendment is to correct the same.

As a matter of fact in a recent case a widow with four or five dependents was awarded compensation for the death of the husband and father, in the neighborhood of \$5,000.00. They had received about \$2,500.00 of this compensation award, leaving a balance of \$2,500.00 payable in weekly installments. She instituted suit against a third party and was awarded a judgment in the neighborhood of \$5,700.00. Out of this judgment the attorney under his retainer was entitled to one-third for his services, *i. e.* the sum of \$1,900.00, leaving \$3,800.00 for the widow and the dependents. However, the employer, under the above section as it now exists, made demand upon the third person for the amount of the compensation already paid to the widow and dependents which was \$2,500.00 and asserted that inasmuch as the common law judgment was for \$5,700.00, that is, an amount greater than the compensation award, that he was released from any further liability to the widow or dependents of the deceased employer. This resulted in the employer being reimbursed for the amount paid under the Compensation Act, *i. e.* \$2,500.00. The attorney received \$1,900.00 for his fee, and all the widow and dependents received was \$1,300.00, and although the employer under the Compensation Act was obliged to pay \$2,500.00 more, he was nevertheless released because the judgment against the third person amounted to more than the Compensation Award. In other words, the widow and dependents were penalized to the extent of \$1,200.00 for their attempt to obtain a judgment against the third party, and at the same time reimburse the employer.

COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 178

STATE OF NEW JERSEY

ADOPTED APRIL 6, 1936

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven, and the several supplements and acts amendatory thereto.

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

1 1. Paragraph twenty-three (f) of said act is hereby amended to read as
2 follows:

3 23. (f) Where a third person or corporation is liable to the employee or
4 his dependents for an injury or death, the existence of a right of compensa-
5 tion from the employer or insurance carrier under this statute shall not
6 operate as a bar to the action of the employee or his dependents, nor be
7 regarded as establishing a measure of damage therein. In the event that
8 the employee or his dependents shall recover and be paid from the said
9 third person or corporation, any sum in release or in judgment on account
10 of his or its liability to the injured employee, the liability of the employer
11 under this statute thereupon shall be only such as is hereinafter in this
12 paragraph provided.

13 (1) The obligation of the employer or his insurance carrier under this
14 statute to make compensation payments shall continue until the payment, if
15 any, by such third person or corporation is made.

16 (2) If the sum recovered by the employee from the third person or
17 corporation, after the expenses of suit and attorney's fee or either of them,
18 as hereinafter defined, have been deducted therefrom, is equivalent to or
19 greater than the liability of the employer or his insurance carrier under this
20 statute, the employer or his insurance carrier shall be released from such
21 liability and shall be entitled to be reimbursed, as hereinafter provided, for
22 the medical expenses incurred and compensation payments theretofore paid
23 to the injured employee or his dependents.

24 (3) If the sum recovered by the employee as aforesaid, after the ex-
25 penses of suit and attorney's fee, or either of them, as hereinafter defined,
26 have been deducted therefrom, is less than the liability of the employer or
27 his insurance carrier under this statute, the employer or his insurance
28 carrier shall be liable only for the difference and shall be entitled to be reim-
29 bursed, as hereinafter provided for so much of the medical expenses incurred
30 and compensation payments theretofore paid to the injured employee or his
31 dependents as exceeds the amount of such difference.

32 (4) If at any time prior to the payment by the third person or corpora-
33 tion to the injured employee or his dependents, the employer or his insurance
34 carrier shall serve notice, as hereinafter provided, upon the said third person
35 or corporation that compensation has been applied for by the injured em-
36 ployee or his dependents it shall thereupon become the duty of the said third
37 person or corporation, before making any payment to the injured employee
38 or his dependents, to inquire from the said employer or his insurance carrier
39 the amount of medical expenses incurred and compensation theretofore paid
40 to the injured employee or to his dependents. Where said notice shall have
41 been served, it shall further become the duty of the said third person or
42 corporation, before making any payment as aforesaid, to inquire from the said
43 injured employee or his dependents the amount of the expense of suit and
44 attorney's fee, or either of them in the action or settlement of the claim
45 against the said third person or corporation. Thereafter, out of that part
46 of any amount about to be paid in release or in judgment by the third

47 person or corporation on account of his or its liability to the injured employee
48 remaining after deducting the employee's expenses of suit and attorney's
49 fee, as hereinafter defined, the employer or his insurance carrier shall be
50 entitled to receive from the third person or corporation, a sum equivalent to
51 the medical expenses incurred and the compensation paid theretofore by the
52 employer or his insurance carrier to the injured employee or his dependents,
53 or so much thereof as may be due the employer or insurance carrier pur-
54 suant to sub-paragraph (3) of this paragraph. Such sum shall be deducted
55 by the third person or corporation from the sum to be paid in release or in
56 judgment to the injured employee or his dependents and shall be paid by
57 the third party or corporation to the employer or his insurance carrier.
58 Service of notice, hereinbefore required to be made by the employer or his
59 insurance carrier upon the said third person or corporation, shall be by
60 registered mail, return receipt and in the case of a corporation shall be
61 mailed to the registered office of such corporation.

62 (5) As used in this paragraph, "expenses of suit" shall mean such
63 expenses, but not in excess of two hundred dollars (\$200.00), and "attorney's
64 fee" shall mean such fee, but not in excess of thirty-three and one third per
65 centum ($33\frac{1}{3}\%$) of that part of the sum paid in release or in judgment to
66 the injured employee or his dependents by said third party or corporation
67 to which the employer or his insurance carrier shall be entitled in reimburse-
68 ment under the provisions of this paragraph, but on all sums in excess thereof,
69 this percentage shall not be binding.

70 (6) When an injured employee or his dependents fail within one year of
71 the accident to either effect a settlement with or institute proceedings for
72 recovery of damages for his injuries and loss against the third person or cor-
73 poration, the employer or his insurance carrier, ten days after a written
74 demand on the injured employee or his dependents, can either effect a
75 settlement with or institute proceedings against the third person or cor-
76 poration for the recovery of damages for the injuries and loss sustained by
77 such injured employee or his dependents and any settlement made or pro-

78 eedings had and taken by such employer or his insurance carrier against
79 said third person or corporation, and such right of action shall be only for
80 such right of action that the injured employee or his dependents would have
81 had against the third person or corporation, and shall constitute a bar to any
82 further claim or action by the injured employee or his dependents against the
83 third person or corporation. If a settlement is effected between the employer
84 or his insurance carrier and the third person or corporation, or a judgment
85 is recovered by the employer or his insurance carrier against the third
86 person or corporation for the injuries and loss sustained by the employee
87 and if the amount secured or obtained by the employer or his insurance
88 carrier is in excess of the employer's obligation to the employee and the
89 expense of suit, such excess shall be paid to the employee or his dependents.
90 The legal action contemplated hereinabove shall be a civil action at law in
91 the name of the injured employee or by the employer or insurance carrier
92 in the name of the employee to the use of the employer or insurance carrier,
93 or by the proper party for the benefit of the next of kin of the employee.

94 (7) If such employee or his dependents effect a settlement with or
95 institute proceedings against the third person or corporation prior to the
96 service of notice of the compensation obligation of the employer or his insur-
97 ance carrier or prior to the institution of any proceedings against the third
98 person or corporation by the employer or his insurance carrier for the
99 injuries and loss sustained by such employee or his dependents, such em-
100 ployer or his insurance carrier is barred from instituting any action or pro-
101 ceedings against the third person or corporation for the injuries and loss
102 sustained by such employee or his dependents.

1 2. This act shall take effect immediately.

162
RS 34:15-40
[SECOND OFFICIAL COPY REPRINT]

COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 178

STATE OF NEW JERSEY

ADOPTED APRIL 6, 1936

AN Act to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven, and the several supplements and acts amendatory thereto.

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

1 1. Paragraph twenty-three (f) of said act is hereby amended to read as
2 follows:

3 23. (f) Where a third person or corporation is liable to the employee or
4 his dependents for an injury or death, the existence of a right of compensa-
5 tion from the employer or insurance carrier under this statute shall not
6 operate as a bar to the action of the employee or his dependents, nor be
7 regarded as establishing a measure of damage therein. In the event that
8 the employee or his dependents shall recover and be paid from the said
9 third person or corporation, any sum in release or in judgment on account
10 of his or its liability to the injured employee, the liability of the employer
11 under this statute thereupon shall be only such as is hereinafter in this
12 paragraph provided.

13 (1) The obligation of the employer or his insurance carrier under this
14 statute to make compensation payments shall continue until the payment, if
15 any, by such third person or corporation is made.

16 (2) If the sum recovered by the employee from the third person or
17 corporation, after the expenses of suit and attorney's fee or either of them,
18 as hereinafter defined, have been deducted therefrom, is equivalent to or
19 greater than the liability of the employer or his insurance carrier under this
20 statute, the employer or his insurance carrier shall be released from such
21 liability and shall be entitled to be reimbursed, as hereinafter provided, for
22 the medical expenses incurred and compensation payments theretofore paid
23 to the injured employee or his dependents.

24 (3) If the sum recovered by the employee as aforesaid, after the ex-
25 penses of suit and attorney's fee, or either of them, as hereinafter defined,
26 have been deducted therefrom, is less than the liability of the employer or
27 his insurance carrier under this statute, the employer or his insurance
28 carrier shall be liable only for the difference and shall be entitled to be reim-
29 bursed, as hereinafter provided for so much of the medical expenses incurred
30 and compensation payments theretofore paid to the injured employee or his
31 dependents as exceeds the amount of such difference.

32 (4) If at any time prior to the payment by the third person or corpora-
33 tion to the injured employee or his dependents, the employer or his insurance
34 carrier shall serve notice, as hereinafter provided, upon the said third person
35 or corporation that compensation has been applied for by the injured em-
36 ployee or his dependents it shall thereupon become the duty of the said third
37 person or corporation, before making any payment to the injured employee
38 or his dependents, to inquire from the said employer or his insurance carrier
39 the amount of medical expenses incurred and compensation theretofore paid
40 to the injured employee or to his dependents. Where said notice shall have
41 been served, it shall further become the duty of the said third person or cor-
42 poration, before making any payment as aforesaid, to inquire from the said
43 injured employee or his dependents the amount of the expenses of suit and
44 attorney's fee, or either of them in the action or settlement of the claim
45 against the said third person or corporation. Thereafter, out of that part
46 of any amount about to be paid in release or in judgment by the third
47 person or corporation on account of his or its liability to the injured employee

48 remaining after deducting the employee's expenses of suit and attorney's
49 fee, as hereinafter defined, the employer or his insurance carrier shall be
50 entitled to receive from the third person or corporation, a sum equivalent to
51 the medical expenses incurred and the compensation paid theretofore by the
52 employer or his insurance carrier to the injured employee or his dependents,
53 or so much thereof as may be due the employer or insurance carrier pur-
54 suant to sub-paragraph (3) of this paragraph. Such sum shall be deducted
55 by the third person or corporation from the sum to be paid in release or in
56 judgment to the injured employee or his dependents and shall be paid by
57 the third party or corporation to the employer or his insurance carrier.
58 Service of notice, hereinbefore required to be made by the employer or his
59 insurance carrier upon the said third person or corporation, shall be by
60 registered mail, return receipt and in the case of a corporation shall be
61 mailed to the registered office of such corporation.

62 (5) As used in this paragraph, "expenses of suit" shall mean such
63 expenses, but not in excess of two hundred dollars (\$200.00), and "attorney's
64 fee" shall mean such fee, but not in excess of thirty-three and one-third per
65 centum (33 $\frac{1}{3}$ %) of that part of the sum paid in release or in judgment to
66 the injured employee or his dependents by said third party or corporation
67 to which the employer or his insurance carrier shall be entitled in reimburse-
68 ment under the provisions of this paragraph, but on all sums in excess thereof,
69 this percentage shall not be binding.

70 (6) When an injured employee or his dependents fail within one year of
71 the accident to either effect a settlement with or institute proceedings for
72 recovery of damages for his injuries and loss against the third person or cor-
73 poration, the employer or his insurance carrier, ten days after a written
74 demand on the injured employee or his dependents, can either effect a
75 settlement with or institute proceedings against the third person or cor-
76 poration for the recovery of damages for the injuries and loss sustained by
77 such injured employee or his dependents and any settlement made or pro-
78 ceedings had and taken by such employer or his insurance carrier against
79 said third person or corporation, and such right of action shall be only for

80. such right of action that the injured employee or his dependents would have
 81 had against the third person or corporation, and shall constitute a bar to any
 82 further claim or action by the injured employee or his dependents against the
 83 third person or corporation. If a settlement is effected between the employer
 84 or his insurance carrier and the third person or corporation, or a judgment
 85 is recovered by the employer or his insurance carrier against the third
 86 person or corporation for the injuries and loss sustained by the employee
 87 and if the amount secured or obtained by the employer or his insurance
 88 carrier is in excess of the employer's obligation to the employee and the
 89 expense of suit, such excess shall be paid to the employee or his dependents.
 90 The legal action contemplated hereinabove shall be a civil action at law in
 91 the name of the injured employee or by the employer or insurance carrier
 92 in the name of the employee to the use of the employer or insurance carrier,
 92½ or by the proper party for the benefit of the next of kin of the employee.
 93 Where an injured employee or his dependents have instituted proceedings
 93½ for recovery of damages for his injuries and loss against a third person or
 94 corporation and such proceedings are dismissed for lack of prosecution, the
 94½ employer or insurance carrier shall, upon application made within ninety
 95 days thereafter, be entitled to have such dismissal set aside, and to continue
 95½ the prosecution of such proceedings in the name of the injured employee
 96 or dependents in accordance with the provisions of this section.

96½ (7) If such employee or his dependents effect a settlement with or
 97 institute proceedings against the third person or corporation prior to the
 97½ service of notice of the compensation obligation of the employer or his insur-
 98 ance carrier or prior to the institution of any proceedings against the third
 98½ person or corporation by the employer or his insurance carrier for the
 99 injuries and loss sustained by such employee or his dependents, such em-
 100 ployer or his insurance carrier is barred from instituting any action or pro-
 101 ceedings against the third person or corporation for the injuries and loss
 102 sustained by such employee or his dependents.

1 2. This act shall take effect immediately.

In the affirmative were—

Messrs. Allardice, Artaserse, Baldwin, Beronio, Bischoff, Bogle, Bruno, Burke, Butz, Cavinato, DeVoe, Donahue, Downer, Evans, Featherer, Gebhardt, Geddes, Goldberg, Higbie, Jackson, Jamieson, Katzenbach, Kelley, Kerner, Kurtz, McAlevy, McCauley, Muir, Newcomb (Speaker), Osmer, Paul, Pesin, Pyne, Sanford, Scott, Scovel, Silkowski, Smith, E. V., Smith, M. M., Stanger, Topoleski, VanFleet, Walker, Young, Zink—45.

In the negative—None.

The Speaker declared Senate amendments to Assembly Bill No. 60 concurred in.

Mr. Higbie offered the following resolution, which was read by the Clerk:

Resolved, That the privileges of the floor be granted to the following newspapermen and telegraph company officials:

George Beal, United Press; Ray Doyle, Daily Mirror; F. Crozier, Herald-Tribune; Kenneth Downs, International News Service; Lou Wedemar, Universal Service; Allan Kellar, World-Telegram; Hal Clark, the Daily Worker; J. Minton, the New Masses; Harold W. Gaunt, Postal Telegraph Co.; C. Dufault, Western Union Telegraph Co.

Be It Further Resolved, That they show their identification cards before being admitted.

Mr. Higbie moved the adoption of the resolution.

Which motion, the ayes and nays being called, was lost by the following vote:

In the affirmative were—

Messrs. Allardice, Baldwin, Bogle, Bruno, Cavinato, DeVoe, Geddes, Higbie, Howe, Kurtz, Muir, Proctor, Pyne, Scott, Smith, M. M., Stanger, VanFleet—17.

In the negative were—

Messrs. Artaserse, Beronio, Bischoff, Burke, Butz, Donahue, Downer, Eber, Featherer, Gebhardt, Giuliano, Goldberg, Hand, Jackson, Jamieson,

Katzenbach, Kelley, Kerner, McAlevy, McCauley, Newcomb (Speaker), Paul, Pesin, Sanford, Scovel, Silkowski, Simon, Smith, E. V., Taggart, Topoleski, Walker, Wilensky, Young, Zink—34.

Mr. Artaserse asked unanimous consent of the House to amend Committee Substitute for Assembly Bill No. 178 on third reading.

There being no objection consent was granted.

Mr. Artaserse offered the following amendments to Committee Substitute for Assembly Bill No. 178 which were read by the Clerk:

On page 4, line 93, after the word "employee" add the following: "Where an injured employee or his dependents have instituted proceedings for recovery of damages for his injuries and loss against a third person or corporation and such proceedings are dismissed for lack of prosecution, the employer or insurance carrier shall, upon application made within ninety days thereafter, be entitled to have such dismissal set aside, and to continue the prosecution of such proceedings in the name of the injured employee or dependents in accordance with the provisions of this section."

Mr. Artaserse moved the adoption of the proposed amendments to Committee Substitute for Assembly Bill No. 178.

Which motion was adopted.

Committee Substitute for Assembly Bill No. 178, entitled "An act to amend an act entitled 'An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, one thousand nine hundred and eleven and the several supplements and acts amendatory thereto,"

As amended,

Was taken up, and, on motion of Mr. Artaserse, under suspension of the rules, was read a third time by its title and passed by the following vote:

Laws of 1951, chapter 169

Senate bill 231. No statements with bill. Not amended during passage.

For background see:

J331.8 Workmen's compensation (the New Jersey experience),
B51 by Monroe Berkowitz.

J331.825 Three years under New Jersey workmen's compensation
A512 law, by the American Association for Labor
Legislation Social Insurance Committee.

Hearings and reports:

This is a selective list of those reports which appear to be related to these laws and were presented close to the time of time of enactment. For additional reports and information on workmen's compensation see the card catalog under New Jersey - Workmen's Compensation.

974.90 Report to the Commissioner of Labor...
E55 New Jersey Workmen's Compensation advisory commission.
1931

974.90 Report...April, 1935
E55 N.J. Joint commission to study workmen's compensation
1935 act and practices.

974.90 Report...April 12,
E55 N.J. Joint commission to study workmen's compensation
1935b act and practices.

974.90 Report of study of New Jersey Workmen's Compensation Act
E55 with recommendation.
1951 Nelson, Harry A.

DEPOSITED

Do Not Remove From

Laws of 1951, chapter 169

Senate bill 231. No statements with bill. Not amended during passage.

Laws 1951 Chapter 169 Senate 231

1 (b) If the sum recovered by the employee from the third person or corporation (,after the expenses of suit and attorney's fee or either of them, as hereinafter defined, have been deducted therefrom,) is equivalent to or greater than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be released from such liability and shall be entitled to be reimbursed, as hereinafter provided, for the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents less employee's expenses of suit and attorney's fee as hereinafter defined.

/ (c) If the sum recovered by the employee as aforesaid(after the expenses of suit and attorney's fee, or either of them, as hereinafter defined, have been deducted therefrom), is less than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be liable (only) for the difference, plus the employee's expenses of suit and attorney's fee as hereinafter defined, and shall be entitled to be reimbursed, as hereinafter provided for so much of the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents as exceeds the amount of such difference plus such employee's expenses of suit and attorney's fee.

/ (d) - - - Thereafter, out of that part of any amount about to be paid in release or in judgment by such third person or corporation on account of his or its liability to the injured employee (remaining after deducting the employee's expenses of suit and attorney's fee, as hereinafter defined), the employer or his insurance carrier shall be entitled to receive from such third person or corporation (, a sum equivalent to the medical expenses incurred and the compensation paid theretofore by the employer or his insurance carrier to the injured employee or his dependents, or] so much theretofore may be due the employer or insurance carrier pursuant to subparagraph (b) or (c) of this section.

ASSEMBLY, No. 585

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1956

By Messrs. MILLS, LAZZIO, MACDONALD and MINTZ

(Without Reference)

AN ACT concerning workmen's compensation, amending sections 34:15-10, 34:15-12, 34:15-13, 34:15-16, 34:15-36, 34:15-40, 34:15-53 and 34:15-66 and supplementing chapter 15 of Title 34 of the Revised Statutes.

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

1 1. Section 34:15-10 of the Revised Statutes is amended to read as
2 follows:

3 34:15-10. In the employment of minors, this article shall be presumed
4 to apply unless the notice be given by or to the parent or guardian of the
5 minor. If the injured employee at the time of the accident or compensable
6 occupational disease is a minor under 14 years of age employed in viola-
7 tion of the labor law or a minor between 14 and 18 years of age employed,
8 permitted or suffered to work without an employment certificate or special
9 permit if required by law or at an occupation prohibited at the minor's age
10 by law, a compensation or death benefit shall be payable to the employee
11 or his dependents which shall be double the amount payable under the
12 schedules provided in sections 34:15-12 and 34:15-13 of this Title.

13 The possession of such duly issued employment certificate shall be con-
14 clusive evidence for an employer that the minor has reached the age certi-

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

15 fied to therein and no extra compensation shall be payable to any minor
16 engaged in an employment allowed by the law for the age and sex certified
17 to in such certificate. If the certificate presented by the employee as one
18 issued to him shall have been really issued to another child and the real
19 age of the employee shall be such that his employment in any capacity
20 or in the particular capacity he was employed by the employer was pro-
21 hibited and if the employer shall show to the satisfaction of the *division*
22 *of workmen's compensation* [bureau] that he accepted the certificate in
23 good faith as having been issued to the employee and could not have, de-
24 spite reasonable diligence, discovered the fraud, in such event no extra com-
25 pensation shall be paid to the employee illegally employed.

26 The employer alone and not the insurance carrier shall be liable for
27 the extra compensation or death benefit which is over and above the amount
28 of the compensation or death benefit provided under said sections 34:15-12
29 or 34:15-13. Any provision in an insurance policy undertaking to relieve
30 an employer from the liability for the extra compensation or extra death
31 benefit shall be void.

32 Nothing in this chapter contained shall deprive an infant under the age
33 of 18 years of the right or rights now existing to recover damages in a
34 common law or other appropriate action or proceeding for injuries received
35 by reason of the negligence of his or her master.

36 Nothing in this section regarding the payment of a compensation or
37 death benefit in double the amount payable under the schedules provided
38 in sections 34:15-12 and 34:15-13 of this Title shall apply to employees, of
39 the age of 18 years or under, employed in summer camps operated by the
40 Boy Scouts of America, the Girl Scouts of America, the Knights of Colum-
41 bus, the Young Men's Christian Association, the Young Women's Christian
42 Association, the Young Men's Hebrew Association, or any domestic corpora-
43 tion organized solely for religious or charitable purposes.

1 2. Section 34:15-12 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-12. Following is a schedule of compensation:

4 a. For injury producing temporary disability, [66 $\frac{2}{3}$ % of the wages]
5 *weekly compensation shall be paid based upon the weekly wage* received at
6 the time of the injury, subject to a maximum compensation of [\\$30.00] \$40.00
7 per week and a minimum of \$10.00 per week *in accordance with the following*
8 "*Wage and Compensation Schedule,*" but expressly subject to the provisions
9 of Revised Statutes 34:15-37:

WAGE AND COMPENSATION SCHEDULE

	<i>Weekly Wage</i>	<i>Weekly Compensation</i>	<i>Weekly Wage</i>	<i>Weekly Compensation</i>
10	\$15.00 or less	\$10 minimum	\$36.01—37.50 . . .	\$25 maximum
11	15.01—16.50 . . .	11	37.51—39.00 . . .	26
12	16.51—18.00 . . .	12	39.01—40.50 . . .	27
13	18.01—19.50 . . .	13	40.51—42.00 . . .	28
14	19.51—21.00 . . .	14	42.01—43.50 . . .	29
15	21.01—22.50 . . .	15	43.51—45.00 . . .	30
16	22.51—24.00 . . .	16	45.01—46.50 . . .	31
17	24.01—25.50 . . .	17	46.51—48.00 . . .	32
18	25.51—27.00 . . .	18	48.01—49.50 . . .	33
19	27.01—28.50 . . .	19	49.51—51.00 . . .	34
20	28.51—30.00 . . .	20	51.01—52.50 . . .	35
21	30.01—31.50 . . .	21	52.51—54.00 . . .	36
22	31.51—33.00 . . .	22	54.01—55.50 . . .	37
23	33.01—34.50 . . .	23	55.51—57.00 . . .	38
24	34.51—36.00 . . .	24	57.01—58.50 . . .	39
25			58.51 or more . .	40 maximum

26 This compensation shall be paid during the period of such disability,
27 not, however, beyond 300 weeks.

28 b. For disability total in character and permanent in quality, [66⅔%
29 of the wages] *weekly compensation shall be paid based upon the weekly wage*
30 *received at the time of injury, subject to a maximum compensation of [\$30.00]*
31 *\$35.00 per week and a minimum of \$10.00 per week in accordance with the*
32 *“Wage and Compensation Schedule” set forth in paragraph a of this section*
33 *but expressly subject to the provisions of Revised Statutes 34:15-37. This*
34 *compensation shall be paid for a period of 450 weeks, at which time compensa-*
35 *tion payments shall cease unless the employee shall have submitted to such*
36 *physical or educational rehabilitation as may have been ordered by the*
37 *rehabilitation commission, and can show that because of such disability it is*
38 *impossible for him to obtain wages or earnings equal to those earned at the*
39 *time of the accident, in which case further weekly payments shall be made*
40 *during the period of such disability, the amount thereof to be the previous*
41 *weekly compensation payment diminished by that portion thereof that the*
42 *wage, or earnings, he is then able to earn, bears to the wages received at the*
43 *time of the accident. If his wages or earnings equal or exceed wages received*
44 *at the time of the accident, then his compensation rate shall be reduced to \$5.00.*
45 *In calculating compensation for this extension beyond 450 weeks the*
46 *minimum provision of \$10.00 shall not apply. This extension of compensation*
47 *payments beyond 450 weeks shall be subject to such periodic reconsidera-*
48 *tions and extensions as the case may require, and shall apply only to dis-*
49 *ability total in character and permanent in quality, and shall not apply to any*
50 *accident occurring prior to July 4, 1923.*

51 c. For disability partial in character [, but] *and permanent in quality,*
52 *the compensation shall be [based upon the extent of such disability. In cases*
53 *included in the following schedule the compensation shall be that named in*
54 *the schedule, to wit] 66 2/3% of the weekly wages received at the time of*
55 *the injury, subject to a maximum compensation of \$35.00 per week and a*
56 *minimum of \$10.00 per week, and shall be paid to the employee for the period*
57 *named in the following schedule (subparagraphs 1 to 23 inclusive):*

<i>Member Lost</i>	<i>Number of Weeks' Compensation</i>
58 1. <i>Thumb</i>	75
59 2. <i>First finger (commonly called index finger)</i>	50
60 3. <i>Second finger</i>	40
61 4. <i>Third finger</i>	30
62 5. <i>Fourth finger (commonly called little finger)</i>	20
63 6. <i>Great toe</i>	40
64 7. <i>Toe, other than a great toe</i>	15
65 8. <i>Hand, or thumb and first and second fingers (on 1</i>	
66 <i>hand) or 4 fingers (on 1 hand)</i>	230
67 9. <i>Arm</i>	300
68 10. <i>Foot</i>	200
69 11. <i>Leg</i>	275
70 [d. For the loss of the thumb, 66 $\frac{2}{3}$ % of daily wages during 75 weeks.]	
71 [e. For the loss of the first finger, commonly called index finger, 66 $\frac{2}{3}$ %	
72 of daily wages during 50 weeks.]	
73 [f. For the loss of a second finger, 66 $\frac{2}{3}$ % of daily wages during 40	
74 weeks.]	
75 [g. For the loss of a third finger, 66 $\frac{2}{3}$ % of daily wages during 30 weeks.]	
76 [h. For the loss of a fourth finger, commonly called little finger, 66 $\frac{2}{3}$ %	
77 of daily wages during 20 weeks.]	
78 [i] 12. The loss of the first phalange of the thumb or of any finger shall	
79 be considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the	
80 compensation shall be for $\frac{1}{2}$ of the periods of time above specified. The loss	
81 of any portion of the thumb or any finger between the terminal joint and the	
82 end thereof shall be compensated for a like proportion of the period of time	
83 prescribed for the loss of the first phalange of such member.	
84 [j] 13. The loss of the first phalange and any portion of the second shall	
85 be considered as the loss of the entire finger or thumb, but in no case shall	
86 the amount received for more than 1 finger exceed the amount provided in this	
87 schedule for the loss of a hand.	

88 [k. For the loss of a great toe, 66⅔% of daily wages during 40 weeks.]

89 [l. For the loss of 1 of the toes other than a great toe, 66⅔% of daily
90 wages during 15 weeks.]

91 [m] 14. The loss of the first phalange of any toe shall be considered to
92 be equal to the loss of ½ of such toe, and compensation shall be for ½ of the
93 period of time above specified.

94 [n] 15. The loss of the first phalange and any portion of the second shall
95 be considered as the loss of the entire toe.

96 [o. For the loss of a hand, or of the thumb and the first and second
97 fingers (on 1 hand), or 4 fingers (on 1 hand), 66⅔% of the daily wages during
98 230 weeks.]

99 [p. For the loss of an arm, 66⅔% of daily wages during 300 weeks.]

100 [q. For the loss of a foot, 66⅔% of daily wages during 200 weeks.]

101 [r. For the loss of a leg, 66⅔% of daily wages during 275 weeks.]

102 [s] 16. For the loss of vision of an eye, [66⅔% of daily wages during
103 150 weeks] 200 weeks.

104 [ss] 17. For the enucleation of an eye, [66⅔% of daily wages during]
105 25 weeks, in addition to such compensation, if any, as may be allowable under
106 [subsection] subparagraph [s] 16.

107 [t] 18. For the loss of a natural tooth, [66⅔% of daily wages for] 4
108 weeks for each tooth lost.

109 [u] 19. For the total loss of hearing in 1 ear, [66⅔% of daily wages
110 during] 60 weeks. For the total loss of hearing in both ears by 1 accident,
111 [66⅔% of daily wages during] 200 weeks.

112 [v] 20. The loss of both hands, or both arms, or both feet, or both legs,
113 or both eyes, or any 2 thereof as the result of any 1 accident, shall con-
114 stitute total and permanent disability to be compensated according to the
115 provisions of paragraph "b."

116 [vv] 21. Amputation between the elbow and the wrist shall be considered
117 as the equivalent of the loss of a hand and amputation at the elbow shall be
118 considered equivalent to the loss of the arm. Amputation between the knee

119 and ankle shall be considered as the equivalent of the loss of a foot, and
120 amputation at the knee shall be considered equivalent to the loss of the leg.

121 **[w]** 22. In all lesser or other cases involving permanent loss, or where
122 the usefulness of a member or any physical function is permanently impaired,
123 **[the compensation shall be 66⅔% of daily wages, and]** the duration of
124 compensation shall bear such relation to the specific periods of time stated
125 in the above schedule as the disabilities bear to those produced by the injuries
126 named in the schedule. In cases in which the disability is determined as a
127 percentage of total and permanent disability the duration of the compensation
128 shall be a corresponding portion of 550 weeks. Should the employer and
129 employee be unable to agree upon the amount of compensation to be paid in
130 cases not covered by the schedule, either party may appeal to the *Division of*
131 *Workmen's Compensation [bureau]* for a settlement of the controversy.

132 **[x]** 23. Where there is a traumatic hernia compensation will be allowed
133 if notice thereof is given by the claimant to the employer within 48 hours after
134 the occurrence of the hernia but any Sunday, Saturday or holiday shall be
135 excluded from this 48-hour period.

136 **[y.** The weekly compensation payments specified in this section are all
137 subject to the same limitation as to maximum and minimum as are stated in
138 paragraph "a" hereof.]

139 *The provisions of this subsection shall be expressly subject to the provi-*
140 *sions of Revised Statutes 34:15-37.*

141 *d. If previous loss of function to the body, head, a member or an organ,*
142 *due to any previous compensable accident or accidents, is established by*
143 *competent evidence, and subsequently an injury arising out of and in the*
144 *course of an employment occurs to that part of the body, head, member or*
145 *organ, where there was a previous loss, then and in such case, the employer*
146 *or his insurance carrier at the time of the subsequent injury shall not be*
147 *liable for any loss for which compensation has previously been paid or*
148 *awarded. In either event, credit shall be given the employer or his insurance*
149 *carrier to the extent of the previous loss for which compensation has been paid.*

150 **[z]** c. In case of the death of the person from any cause other than the
 151 accident or occupational disease, during the period of payments for permanent
 152 injury, the remaining payments shall be paid to such of his or her dependents
 153 as are included in the provisions of said section 34:15-13 or, if no dependents,
 154 the remaining amount due, but not exceeding **[\$250.00]** \$400.00, shall be paid
 155 in a lump sum to the proper person for funeral expenses; but no compensa-
 156 tion shall be due any other person than the injured employee on account of
 157 compensation being paid in excess of 450 weeks on account of disability total
 158 in character and permanent in quality as provided by paragraph "b" of this
 159 section.

1 3. Section 34:15-13 of the Revised Statutes is amended to read as
 2 follows:

3 34:15-13. **[In]** Except as hereinafter provided, in case of death, com-
 4 pensation shall be computed, but not distributed, on the following basis:

5 a. For 1 dependent, 35% of wages.

6 b. For 2 dependents, 40% of wages.

7 c. For 3 dependents, 45% of wages.

8 d. For 4 dependents, 50% of wages.

9 e. For 5 dependents, 55% of wages.

10 f. For 6 or more dependents, 60% of wages.

11 g. The term "dependents" shall apply to and include any or all of the
 12 following who are dependent upon the deceased at the time of accident or
 13 the occurrence of occupational disease, or at the time of death, namely: Hus-
 14 band, wife, parents, stepparents, grandparents, children, stepchildren, grand-
 15 children, child in esse, posthumous child, illegitimate children,
 16 brothers, sisters, half brothers, half sisters, niece, nephew. Legally
 17 adopted children shall, in every particular, be considered as natural
 17A children. Dependency shall be conclusively presumed as to the de-
 18 cedent's widow and natural children under 18 years of age who were
 19 actually a part of the decedent's household at the time of his death. Every
 20 provision of this article applying to one class shall be equally applicable to

21 the other. Should any dependent of a deceased employee die during the
22 period covered by such weekly payments [or should the widow of a de-
23 ceased employee remarry during such period,] the right of such dependent
24 [or of such widow] to compensation under this section shall cease *but should*
25 *the widow of a deceased employee remarry during such period and before*
26 *the total compensation is paid, she shall be entitled to receive the remain-*
27 *der of the compensation which would have been due her had she not remar-*
28 *ried, or \$1,000.00, whichever is the lesser.* The foregoing schedule applies
29 only to persons wholly dependent, and in the case of persons only partially
30 dependent, except in the case of the widow and children who were actually
31 a part of the decedent's household at the time of his death, the compensa-
32 tion shall be such proportion of the scheduled percentage as the amounts
33 actually contributed to them by the deceased for their support constituted
34 of his total wages and the provision as to a \$10.00 minimum shall not apply
35 to such compensation. In determining the number of dependents, where the
36 deceased employee was a minor, the number of persons dependent upon the
37 deceased employee shall be determined in the same way as if the deceased
38 employee were an adult, notwithstanding any rule of law as to the person
39 entitled to a minor's wages.

40 h. Compensation shall be computed upon the foregoing basis. Distribu-
41 tion shall be made among dependents, if more than 1, according to the
42 order of the Division of Workmen's Compensation, which shall, when ap-
43 plied to for that purpose determine, upon the facts being presented to it,
44 the proportion to be paid to or on behalf of each dependent according to
45 the relative dependency. Payment on behalf of infants shall be made to the
46 surviving parent, if any, or to the statutory or testamentary guardian.

47 i. If death results from the accident or occupational disease, whether
48 there be dependents or not, expenses of the last sickness of the deceased
49 employee shall be paid in accordance with the provisions for medical and
50 hospital service as set forth in section 34:15-15 of this Title. Also the cost
51 of burial, not to exceed [~~\$250.00~~] \$400.00, shall be paid to the dependent

52 or other person having paid said costs of burial. In the event that the said
 53 dependent or other person has paid less than ~~[\$250.00]~~ \$400.00 the said de-
 54 pendent or other person shall be reimbursed in the amount paid and, if the
 55 costs of burial exceed the amount so paid, the difference between the said
 56 amount and ~~[\$250.00]~~ \$400.00 or so much thereof as may be necessary to
 57 pay the costs of burial, shall be paid to the undertaker or embalmer. In the
 58 event that no part of the costs of burial has been paid, the amount of such
 59 cost of burial, not to exceed ~~[\$250.00]~~ \$400.00, shall be paid to the under-
 60 taker or embalmer.

61 j. In computing compensation to those named in this section, except hus-
 62 band, wife, parents and stepparents, only those under 18 or over 40 years
 63 of age shall be included and then only for that period in which they are
 64 under 18 or over 40; provided, however, that payments to such physically
 65 or mentally deficient persons as are for such reason dependent shall be made
 66 during the full compensation period of ~~[300]~~ 350 weeks.

67 k. The maximum compensation in case of death shall be ~~[\$30.00]~~ \$35.00
 68 per week and the minimum \$10.00 per week, except in the case of partial de-
 69 pendency as provided in this section. This compensation shall be paid dur-
 70 ing ~~[300]~~ 350 weeks and if at the expiration of ~~[300]~~ 350 weeks there
 71 shall be 1 or more dependents under 18 years of age compensation shall
 72 be continued for such dependents until they reach 18 years of age at
 73 the schedule provided under paragraphs "a" to "f" of this section.

1 4. Section 34:15-16 of the Revised Statutes is amended to read as
 2 follows:

3 34:15-16. Compensation for all classes of injuries shall run consecutively,
 4 and not concurrently, except as provided *in this section and* in section
 5 34:15-15 of this Title, as follows: First, medical and hospital services and
 6 medicines as provided in said section 34:15-15. After the waiting period,
 7 compensation during temporary disability. If total period of disability ex-
 8 tends beyond 4 weeks, compensation to cover waiting period. Following both,
 9 either or none of the above, compensation consecutively for each permanent

10 injury, *except that permanent disability, total or partial, shall not be deter-*
 11 *mined or awarded until after 26 weeks from the date of the accident, except*
 12 *in cases of amputation or enucleation or death from other cause within that*
 13 *time and except when earlier determination of permanent disability is waived*
 14 *by the employer or his insurance carrier. Nothing herein contained shall pre-*
 15 *vent an employer or his insurance carrier from paying permanent disability*
 16 *compensation voluntarily prior to the expiration of the 26 week period. Fol-*
 17 *lowing any or all or none of the above, if death results from the accident, ex-*
 18 *penses of last sickness and burial. Following which compensation to depend-*
 19 *ents, if any.*

20 Where an employer or his insurance carrier desires to pay for or furnish
 21 medical, surgical, or hospital treatment, drugs, orthopedic or prosthetic ap-
 22 pliances, after the date when payments under sections 34:15-12 and 34:15-13
 23 of this Title have terminated, the employer or his insurance carrier may, in
 24 writing, reserve the defense of the jurisdictional limitations provided by sec-
 25 tions 34:15-27, 34:15-34, 34:15-41 and 34:15-51 of this Title; provided, that
 26 the reservation is approved by a deputy [commissioner] *director* after ad-
 27 vising the petitioner personally of his rights and of the effect of such reser-
 28 vation.

1 5. Section 34:15-36 of the Revised Statutes is amended to read as fol-
 2 lows:

3 34:15-36. "Willful negligence" within the intent of this chapter shall
 4 consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as
 5 evidences reckless indifference to safety, or (3) intoxication, operating as the
 6 proximate cause of injury.

7 "Employer" is declared to be synonymous with master, and includes
 8 natural persons, partnerships, and corporations; "employee" is synonymous
 9 with servant, and includes all natural persons who perform service for another
 10 for financial consideration, exclusive of casual employments, which shall be
 11 defined, if in connection with the employer's business, as employment the
 12 occasion for which arises by chance or is purely accidental; or if not in con-

13 nection with any business of the employer, as employment not regular, pe-
14 riodic or recurring; provided, however, that forest fire wardens and forest fire
15 fighters employed by the State of New Jersey shall, in no event, be deemed
16 casual employees.

17 【A person engaged in the vending, selling or offering for sale or deliver-
18 ing directly to the general public newspapers, magazines or periodicals or
19 acting as sales agent or distributor as an independent contractor of or for any
20 such newspaper, magazine or periodical shall not be considered an employee
21 within the provisions of this chapter.】

1 6. Section 34:15-40 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-40. Where a third person 【or corporation】 is liable to the em-
4 ployee 【or his dependents】 for an injury or death, the existence of a right
5 of compensation from the employer 【or insurance carrier】 under this stat-
6 ute shall not operate as a bar to the action of the employee 【or his depend-
7 ents】, nor be regarded as establishing a measure of damage therein. In the
8 event that the employee 【or his dependents】 shall recover and be paid from
9 the said third person 【or corporation】 *or his insurance carrier*, any sum in
10 release or in judgment on account of his or its liability to the injured em-
11 ployee, the liability of the employer under this statute thereupon shall be only
12 such as is hereinafter in this section provided.

13 (a) The obligation of the employer 【or his insurance carrier】 under
14 this statute to make compensation payments shall continue until the pay-
15 ment, if any, by such third person 【or corporation】 *or his insurance carrier*
16 is made.

17 (b) If the sum recovered by the employee from the third person 【or
18 corporation】 *or his insurance carrier* is equivalent to or greater than the
19 liability of the employer 【or his insurance carrier】 under this statute, the
20 employer 【or his insurance carrier】 shall be released from such liability and
21 shall be entitled to be reimbursed, as hereinafter provided, for the medical
22 expenses incurred and compensation payments theretofore paid to the in-

23 injured employee [or his dependents] less employee's expenses of suit and
24 attorney's fee as hereinafter defined.

25 (c) If the sum recovered by the employee as aforesaid is less than the
26 liability of the employer [or his insurance carrier] under this statute, the
27 employer [or his insurance carrier] shall be liable for the difference, plus
28 the employee's expenses of suit and attorney's fee as hereinafter defined,
29 and shall be entitled to be reimbursed, as hereinafter provided for so much of
30 the medical expenses incurred and compensation payments theretofore paid
31 to the injured employee [or his dependents] as exceeds the amount of such
32 difference plus such employee's expenses of suit and attorney's fee.

33 (d) If at any time prior to the payment by the third person [or corpora-
34 tion] *or his insurance carrier* to the injured employee [or his dependents],
35 the employer [or his insurance carrier] shall serve notice, as hereinafter
36 provided, upon such third person [or corporation] *or his insurance carrier*
37 that compensation has been applied for by the injured employee [or his de-
38 pendents] it shall thereupon become the duty of such third person [or cor-
39 poration] *or his insurance carrier*, before making any payment to the injured
40 employee [or his dependents], to inquire from such employer [or his in-
41 surance carrier] the amount of medical expenses incurred and compensation
42 theretofore paid to the injured employee [or to his dependents]. Where such
43 notice shall have been served, it shall further become the duty of such third
44 person [or corporation] *or his insurance carrier*, before making any payment
45 as aforesaid, to inquire from such injured employee [or his dependents] the
46 amount of the expenses of suit and attorney's fee, or either of them in the
47 action or settlement of the claim against such third person [or corporation]
48 *or his insurance carrier*. Thereafter, out of that part of any amount about
49 to be paid in release or in judgment by such third person [or corporation]
50 *or his insurance carrier* on account of his or its liability to the injured em-
51 ployee, the employer [or his insurance carrier] shall be entitled to receive
52 from such third person [or corporation] *or his insurance carrier* so much
53 thereof as may be due the employer [or insurance carrier] pursuant to sub-

54 paragraph (b) or (c) of this section. Such sum shall be deducted by such
55 third person [or corporation] *or his insurance carrier* from the sum to be
56 paid in release or in judgment to the injured employee [or his dependents]
57 and shall be paid by such third [party or corporation] *person or his insur-*
58 *ance carrier* to the employer [or his insurance carrier]. Service of notice,
59 hereinbefore required to be made by the employer [or his insurance carrier]
60 upon such third person [or corporation] *or his insurance carrier*, shall be by
61 registered mail, return receipt and in [the] cases [of a corporation] *other*
62 *than an individual* shall be mailed to the registered office of such [corpora-
63 tion] *other person or his insurance carrier*.

64 (e) As used in this section, "expenses of suit" shall mean such expenses,
65 but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but
66 not in excess of 33 $\frac{1}{3}$ % of that part of the sum paid in release or in judgment
67 to the injured employee [or his dependents] by such third [party or cor-
68 poration] *person or his insurance carrier* to which the employer [or his in-
69 surance carrier] shall be entitled in reimbursement under the provisions of
70 this section, but on all sums in excess thereof, this percentage shall not be
71 binding.

72 (f) When an injured employee [or his dependents] fails within 1 year
73 of the accident to either effect a settlement with *the third person or his in-*
74 *surance carrier* or institute proceedings for recovery of damages for his in-
75 juries and loss against the third person [or corporation], the employer [or
76 his insurance carrier], 10 days after a written demand on the injured em-
77 ployee [or his dependents], can either effect a settlement with *the third*
78 *person or his insurance carrier* or institute proceedings against the third
79 person [or corporation] for the recovery of damages for the injuries and
80 loss sustained by such injured employee [or his dependents] and any settle-
81 ment made *with the third person or his insurance carrier* or proceedings had
82 and taken by such employer [or his insurance carrier] against such third
83 person [or corporation], and such right of action shall be only for such
84 right of action that the injured employee [or his dependents] would have

85 had against the third person [or corporation], and shall constitute a bar to
86 any further claim or action by the injured employee [or his dependents]
87 against the third person [or corporation]. If a settlement is effected be-
88 tween the employer [or his insurance carrier] and the third person [or cor-
89 poration] *or his insurance carrier*, or a judgment is recovered by the em-
90 ployer [or his insurance carrier] against the third person [or corporation]
91 for the injuries and loss sustained by the employee and if the amount secured
92 or obtained by the employer [or his insurance carrier] is in excess of the em-
93 ployer's obligation to the employee and the expense of suit, such excess shall
94 be paid to the employee [or his dependents]. The legal action contemplated
95 hereinabove shall be a civil action at law in the name of the injured employee
96 or by the employer [or insurance carrier] in the name of the employee to the
97-99 use of the employer [or insurance carrier], or by the proper party for the
100 benefit of the next of kin of the employee. Where an injured employee [or
101 his dependents have] *has* instituted proceedings for recovery of damages
102 for his injuries and loss against a third person [or corporation] and such
103 proceedings are dismissed for lack of prosecution, the employer [or insur-
104 ance carrier] shall, upon application made within 90 days thereafter, be en-
105 titled to have such dismissal set aside, and to continue the prosecution of
106 such proceedings in the name of the injured employee [or dependents] in
107 accordance with the provisions of this section.

108 (g) If such employee [or his dependents] effects a settlement with *the*
109 *third person or his insurance carrier* or institutes proceedings against the
110 third person [or corporation] prior to the service of notice *upon the third*
111 *person or his insurance carrier* of the compensation obligation of the em-
112 ployer [or his insurance carrier] or prior to the institution of any proceed-
113 ings against the third person [or corporation] by the employer [or his in-
114 surance carrier] for the injuries and loss sustained by such employee [or
115 his dependents], such employer [or his insurance carrier] is barred from
116 instituting any action or proceedings against the third person [or corpora-
117 tion] for the injuries and loss sustained by such employee [or his depend-
118 ents].

119 *Any reference in this section to the employer shall for the purposes of*
120 *this section be deemed to include his insurance carrier, if any. Any refer-*
121 *ence in this section to an employee shall for the purposes of this section be*
122 *deemed to include his dependents, if any.*

1 7. Section 34:15-53 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-53. Within [10] 20 days after the filing of an answer, or the ex-
4 piration of the time for filing an answer if no answer is filed, the secretary
5 of the [bureau] *division* shall fix a time and place for hearing the petition,
6 or shall send the petition and answer or a transcript of the petition and
7 answer to the [commissioner] *director*, a deputy [commissioner] *director* or
8 1 of the referees, in which case such [commissioner] *director*, deputy
9 [commissioner] *director* or referee, within [15] 20 days after the filing of
10 the answer, shall fix a time and place for the hearing of the petition. Such
11 time shall be not less than 4 weeks nor more than 6 weeks after the filing of
12 the petition, *provided however, that in cases where the extent of permanent*
13 *disability, total or partial, is an issue, the determination of such issue shall*
14 *be deferred as provided in section 34:15-16 of this Title.* The petition shall
15 be heard either in the county in which the injury occurred or in which the
16 petitioner or [defendant] *respondent* resides, or in which the [defendant's]
17 *respondent's* place of business is located, or in which the [defendant] *re-*
18 *spondent* may be served with process. When a time and place has been
19 fixed for such hearing, the [commissioner] *director*, deputy [commissioner]
20 *director* or the referee to whom the cause has been referred shall give at least
21 10 days' notice to each party of the time and place of hearing. The [com-
22 missioner] *director*, deputy [commissioner] *director* or any referee to whom
23 a cause has been referred, shall have power to adjourn the hearing thereof
24 from time to time in his discretion.

1 8. Section 34:15-66 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-66. Either party may appeal from the judgment of the director,
4 deputy director, or referee, to the County Court of the county in which the
5 accident occurred or, if the accident occurred out of the State, then of the
6 county wherein the hearing was had, by filing with the secretary of the divi-
7 sion, and with the clerk of such county, a notice of appeal. Such notice
8 shall be filed within ~~[30]~~ 45 days after the judgment has been rendered.
9 The judgment entered in the County Court on any such appeal shall be con-
10 clusive and binding, and proceedings thereon shall only be for the recovery
11 of moneys thereby determined to be due. Costs may be awarded by the
12 court in its discretion, and when so awarded the same costs shall be allowed,
13 taxed and collected as are allowed, taxed and collected for like services in
14 the County Court. In case the respondent, in said appeal, is unable to pay
15 counsel, the court shall assign counsel to represent him. Nothing herein
16 contained shall be construed as limiting the jurisdiction of the Superior
17 Court to review any matter through a proceeding in lieu of prerogative writ
18 or as limiting the jurisdiction of the Supreme Court.

1 9. An accident to an employee causing his injury or death, suffered while
2 engaged in his employment but resulting from horseplay or skylarking on the
3 part of a fellow employee, not instigated or taken part in by the employee who
4 suffers the accident, shall be construed to have arisen out of and in the course
5 of the employment of such employee and shall be compensable under the act
6 hereby supplemented accordingly.

1 10. Whenever as the result of an accident for which compensation is pay-
2 able to any employee of any employer under the article to which this act is a
3 supplement, such employee sustains damage to, or destruction of, a prosthetic
4 device, hearing aid, artificial member, dental appliance or his eyeglasses, cloth-
5 ing or personal effects, it shall be the obligation of the employer to repair or
6 replace the same or to make payment of the cost or value thereof, upon claim
7 made therefor, which obligation shall be in addition to the obligation for the
8 payment of the compensation payable to said employee for injuries sustained
9 as a result of such accident.

1 11. Whenever a physician, surgeon or hospital shall, at the instance of
2 an employer or his insurance carrier, render or furnish medical or hospital
3 service to an employee, it shall be the duty of the employer and the insurance
4 carrier, if any, to obtain from the physician, surgeon or hospital a detailed re-
5 port in writing of the medical history of the employee and of the examination
6 and treatment of the employee, including the findings, diagnoses, estimates,
7 prognoses and treatments advised and given, if any, and to furnish the em-
8 ployee with such report or reports or a true copy of the same, within 10 days
9 after the rendering or furnishing of any such medical or hospital service.

1 12. The Division of Workmen's Compensation shall enforce the pro-
2 visions of section 11 of this act and the director or any deputy director of the
3 division shall, upon application made for the purpose, order compliance in
4 any particular case or instance.

1 13. Any employer or insurance carrier failing to comply with the pro-
2 visions of section 11 of this act shall be precluded from offering any defense or
3 opposition to the employee's claim for compensation, unless it is shown to
4 the satisfaction of the said director or deputy director that the employer or
5 insurance carrier is without fault and shall comply with the provisions of
6 this act.

1 14. Any employer or insurance carrier shall also be subject to a penalty
2 for each noncompliance of the provisions of section 11 of this act, of not less
3 than \$100.00 or more than \$500.00, to be fixed by the Commissioner of Labor
4 and Industry, which shall be recoverable by a suit at law by the said com-
5 missioner in the name of the State of New Jersey.

6 15. This act shall take effect January 1, 1957.

STATEMENT

Recognizing the fact that the compensation benefit rates now payable are out of proportion to meet the present cost of living both temporary and permanent benefits are increased accordingly by this bill.

The increase of temporary compensation benefits to \$40.00 per week is to provide the injured worker with a sum while he is away from his employment and not receiving any wages, sufficient to meet to some extent his overhead expenditures.

Permanent disability benefits, payable after the petitioner has concluded his temporary benefits, are increased to \$35.00 per week, as the prevailing rate is out of proportion under present economic conditions.

To simplify the disbursement of compensation a schedule was compiled wherein the amounts payable will be in even dollars.

The increase in the schedule covering the loss of vision of an eye from 150 weeks to 200 weeks is intended to bring this benefit into line with the scheduled amounts payable for loss of other major members.

The provision relative to the employer or his insurance carrier being allowed credit for any payments made in connection with a previous compensable accident to the same part of body, head, member or organ is equitable.

In the case of a widow who remarries prior to the expiration of the period of dependency, the present law prescribes that she shall forfeit the entire balance of benefits, whereas under this bill she will be entitled to receive the balance of benefits or \$1,000.00, whichever is the lesser.

The increase in funeral allowance to \$400.00 is to meet the present cost of that service.

The increase in the schedule of weeks from 300 to 350 payable under section 34:15-13 gives further aid to dependents as named therein.

The 26-week period applying from the date of accident and made a part of section 34:15-16 under certain circumstances is for the purpose of delaying estimation of disability until a more accurate estimation of permanent disability can be made.

The time for filing answers as provided in section 34:15-53 is increased since the 10-day time is inadequate as is the 15 days after the filing for time and place for the hearing of the petition.

Change to 45 days in section 34:15-66 is to accord with Court Rules.

The inclusion in the bill of payment of compensation to an innocent employee who is injured due to skylarking in which he does not participate during his employment prevents a hardship to the innocent. Employees meeting with an accident arising out of their employment, whose artificial appliances used in connection with their upper or lower extremities, false teeth or bridges, artificial eyes, et cetera, are broken or destroyed in the accident will be reimbursed by the employer under this bill.

Furnishing of medical and hospitalization reports by employers or insurance companies as added in the bill is beneficial to all concerned.

SENATE COMMITTEE AMENDMENTS TO

ASSEMBLY, No. 585

STATE OF NEW JERSEY

ADOPTED JULY 9, 1956

Amend page 3, section 2, line 10, at end, omit "maximum".

Amend page 3, section 2, lines 16 to 25:

Omit "45.01—46.50 ... 31"

Omit "46.51—48.00 ... 32"

Omit "48.01—49.50 ... 33"

Omit "49.51—51.00 ... 34"

Omit "51.01—52.50 ... 35"

Omit "52.51—54.00 ... 36"

Omit "54.01—55.50 ... 37"

Omit "55.51—57.00 ... 38"

Omit "57.01—58.50 ... 39"

Omit "58.51 or more .. 40 maximum".

Insert "45.01—47.50 ... 31"

Insert "47.51—50.00 ... 32"

Insert "50.01—52.50 ... 33"

Insert "52.51—55.00 ... 34"

Insert "55.01—57.50 ... 35"

Insert "57.51—60.00 ... 36"

Insert "60.01—62.50 ... 37"

Insert "62.51—65.00 ... 38"

Insert "65.01—67.50 ... 39"

Insert "67.51 and over.. 40 maximum".

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

Amend page 4, section 2, line 31, omit "\$35.00", insert "\$40.00".

Amend page 4, section 2, line 52, omit "the", insert "weekly", after "be", insert "paid".

Amend page 4, section 2, line 54, omit "66 $\frac{2}{3}$ % of", insert "based upon".

Amend page 4, section 2, line 56, after "week", insert "in accordance with the 'Wage and Compensation Schedule' set forth in paragraph 'a' of this section, but expressly subject to the provisions of Revised Statutes 34:15-37,".

Amend page 7, section 2, lines 139 and 140, omit.

Amend page 10, section 3, line 67, omit "\$35.00", insert "\$40.00".

Amend page 11, section 4, line 10, after "that", insert "permanent disability, total or partial, shall not be determined or awarded until after 26 weeks from the date of the employee's final active medical treatment, or until 26 weeks from the date of the employee's return to work, whichever is earlier, or, if no time is lost or no treatment is rendered, then".

Amend pages 12 to 16, section 6, omit, insert the following:

"6. Section 34:15-40 of the Revised Statutes is amended to read as follows:

34:15-40. Where a third person [or corporation] is liable to the employee or his dependents for an injury or death, the existence of a right of compensation from the employer or insurance carrier under this statute shall not operate as a bar to the action of the employee or his dependents, nor be regarded as establishing a measure of damage therein. In the event that the employee or his dependents shall recover and be paid from the said third person [or corporation] or his insurance carrier, any sum in release or in judgment on account of his or its liability to the injured employee or his dependents, the liability of the employer under this statute thereupon shall be only such as is hereinafter in this section provided.

(a) The obligation of the employer or his insurance carrier under this statute to make compensation payments shall continue until the payment, if any, by such third person [or corporation] or his insurance carrier is made.

(b) If the sum recovered by the employee *or his dependents* from the third person [or corporation] *or his insurance carrier* is equivalent to or greater than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be released from such liability and shall be entitled to be reimbursed, as hereinafter provided, for the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents less employee's expenses of suit and attorney's fee as hereinafter defined.

(c) If the sum recovered by the employee *or his dependents* as aforesaid is less than the liability of the employer or his insurance carrier under this statute, the employer or his insurance carrier shall be liable for the difference, plus the employee's expenses of suit and attorney's fee as hereinafter defined, and shall be entitled to be reimbursed, as hereinafter provided for so much of the medical expenses incurred and compensation payments theretofore paid to the injured employee or his dependents as exceeds the amount of such difference plus such employee's expenses of suit and attorney's fee.

(d) If at any time prior to the payment by the third person [or corporation] *or his insurance carrier* to the injured employee or his dependents, the employer or his insurance carrier shall serve notice, as hereinafter provided, upon such third person [or corporation] *or his insurance carrier* that compensation has been applied for by the injured employee or his dependents it shall thereupon become the duty of such third person [or corporation] *or his insurance carrier*, before making any payment to the injured employee or his dependents, to inquire from such employer or his insurance carrier the amount of medical expenses incurred and compensation theretofore paid to the injured employee or to his dependents. Where such notice shall have been served, it shall further become the duty of such third person [or corporation] *or his insurance carrier*, before making any payment as aforesaid, to inquire from such injured employee or his dependents the amount of the expenses of suit and attorney's fee, or either of them in the action or settlement of the claim against such third person [or corporation] *or his insurance carrier*. Thereafter, out

of that part of any amount about to be paid in release or in judgment by such third person [or corporation] or his insurance carrier on account of his or its liability to the injured employee or his dependents, the employer or his insurance carrier shall be entitled to receive from such third person [or corporation] or his insurance carrier so much thereof as may be due the employer or insurance carrier pursuant to subparagraph (b) or (c) of this section. Such sum shall be deducted by such third person [or corporation] or his insurance carrier from the sum to be paid in release or in judgment to the injured employee or his dependents and shall be paid by such third [party or corporation] person or his insurance carrier to the employer or his insurance carrier. Service of notice, hereinbefore required to be made by the employer or his insurance carrier upon such third person [or corporation] or his insurance carrier, shall be by registered mail, return receipt and in [the] cases [of a corporation] other than an individual shall be mailed to the registered office of such [corporation] other third person or his insurance carrier.

(e) As used in this section, "expenses of suit" shall mean such expenses, but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but not in excess of 33 $\frac{1}{3}$ % of that part of the sum paid in release or in judgment to the injured employee or his dependents by such third [party or corporation] person or his insurance carrier to which the employer or his insurance carrier shall be entitled in reimbursement under the provisions of this section, but on all sums in excess thereof, this percentage shall not be binding.

(f) When an injured employee or his dependents fail within 1 year of the accident to either effect a settlement with the third person or his insurance carrier or institute proceedings for recovery of damages for his injuries and loss against the third person [or corporation], the employer or his insurance carrier, 10 days after a written demand on the injured employee or his dependents, can either effect a settlement with the third person or his insurance carrier or institute proceedings against the third person [or corporation] for the recovery of damages for the injuries and loss sustained by such injured employee or his dependents and any settlement made with the third person or his

insurance carrier or proceedings had and taken by such employer or his insurance carrier against such third person [or corporation], and such right of action shall be only for such right of action that the injured employee or his dependents would have had against the third person [or corporation], and shall constitute a bar to any further claim or action by the injured employee or his dependents against the third person [or corporation]. If a settlement is effected between the employer or his insurance carrier and the third person [or corporation] or *his insurance carrier*, or a judgment is recovered by the employer or his insurance carrier against the third person [or corporation] for the injuries and loss sustained by the employee or *his dependents* and if the amount secured or obtained by the employer or his insurance carrier is in excess of the employer's obligation to the employee or *his dependents* and the expense of suit, such excess shall be paid to the employee or his dependents. The legal action contemplated hereinabove shall be a civil action at law in the name of the injured employee or by the employer or insurance carrier in the name of the employee to the use of the employer or insurance carrier, or by the proper party for the benefit of the next of kin of the employee. Where an injured employee or his dependents have instituted proceedings for recovery of damages for his injuries and loss against a third person [or corporation] and such proceedings are dismissed for lack of prosecution, the employer or insurance carrier shall, upon application made within 90 days thereafter, be entitled to have such dismissal set aside, and to continue the prosecution of such proceedings in the name of the injured employee or dependents in accordance with the provisions of this section.

(g) If such employee or his dependents effect a settlement with *the third person or his insurance carrier* or institute proceedings against the third person [or corporation] prior to the service of notice *upon the third person or his insurance carrier* of the compensation obligation of the employer or his insurance carrier or prior to the institution of any proceedings against the third person [or corporation] by the employer or his insurance carrier for the injuries and loss sustained by such employee or his dependents, such employer or

his insurance carrier is barred from instituting any action or proceedings against the third person [or corporation] for the injuries and loss sustained by such employee or his dependents.

The words "third person" as used in this section include corporations, companies, associations, societies, firms, partnerships and joint stock companies as well as individuals."

Amend page 17, section 10, lines 4 and 5, omit "his", omit "clothing or personal effects,".

Amend page 18, sections 11 to 14, inclusive, omit.

Amend page 18, section 15, line 1, omit "15.", insert "11."

[OFFICIAL COPY REPRINT]
ASSEMBLY, No. 585

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1956

By Messrs. MILLS; LAZZIO, MACDONALD and MINTZ

(Without Reference)

AN ACT concerning workmen's compensation, amending sections 34:15-10, 34:15-12, 34:15-13, 34:15-16, 34:15-36, 34:15-40, 34:15-53 and 34:15-66 and supplementing chapter 15 of Title 34 of the Revised Statutes.

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

1 1. Section 34:15-10 of the Revised Statutes is amended to read as
2 follows:

3 34:15-10. In the employment of minors, this article shall be presumed
4 to apply unless the notice be given by or to the parent or guardian of the
5 minor. If the injured employee at the time of the accident or compensable
6 occupational disease is a minor under 14 years of age employed in viola-
7 tion of the labor law or a minor between 14 and 18 years of age employed,
8 permitted or suffered to work without an employment certificate or special
9 permit if required by law or at an occupation prohibited at the minor's age
10 by law, a compensation or death benefit shall be payable to the employee
11 or his dependents which shall be double the amount payable under the
12 schedules provided in sections 34:15-12 and 34:15-13 of this Title.

13 The possession of such duly issued employment certificate shall be con-
14 clusive evidence for an employer that the minor has reached the age certi-
15 fied to therein and no extra compensation shall be payable to any minor

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

16 engaged in an employment allowed by the law for the age and sex certified
17 to in such certificate. If the certificate presented by the employee as one
18 issued to him shall have been really issued to another child and the real
19 age of the employee shall be such that his employment in any capacity
20 or in the particular capacity he was employed by the employer was pro-
21 hibited and if the employer shall show to the satisfaction of the *division*
22 of workmen's compensation [bureau] that he accepted the certificate in
23 good faith as having been issued to the employee and could not have, de-
24 spite reasonable diligence, discovered the fraud, in such event no extra com-
25 pensation shall be paid to the employee illegally employed.

26 The employer alone and not the insurance carrier shall be liable for
27 the extra compensation or death benefit which is over and above the amount
28 of the compensation or death benefit provided under said sections 34:15-12
29 or 34:15-13. Any provision in an insurance policy undertaking to relieve
30 an employer from the liability for the extra compensation or extra death
31 benefit shall be void.

32 Nothing in this chapter contained shall deprive an infant under the age
33 of 18 years of the right or rights now existing to recover damages in a
34 common law or other appropriate action or proceeding for injuries received
35 by reason of the negligence of his or her master.

36 Nothing in this section regarding the payment of a compensation or
37 death benefit in double the amount payable under the schedules provided
38 in sections 34:15-12 and 34:15-13 of this Title shall apply to employees, of
39 the age of 18 years or under, employed in summer camps operated by the
40 Boy Scouts of America, the Girl Scouts of America, the Knights of Colum-
41 bus, the Young Men's Christian Association, the Young Women's Christian
42 Association, the Young Men's Hebrew Association, or any domestic corpora-
43 tion organized solely for religious or charitable purposes.

1 2. Section 34:15-12 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-12. Following is a schedule of compensation:

4 a. For injury producing temporary disability, [66⅔% of the wages]
 5 *weekly compensation shall be paid based upon the weekly wage* received at
 6 the time of the injury, subject to a maximum compensation of **[\$30.00]** *\$40.00*
 7 per week and a minimum of \$10.00 per week *in accordance with the following*
 8 "*Wage and Compensation Schedule,*" but expressly subject to the provisions
 9 of Revised Statutes 34:15-37:

WAGE AND COMPENSATION SCHEDULE

	<i>Weekly Weekly Wage</i>	<i>Weekly Compensation</i>	<i>Weekly Wage</i>	<i>Weekly Compensation</i>
10	<i>\$15.00 or less</i>	<i>\$10 minimum</i>	<i>\$35.01—37.50 . . .</i>	<i>\$25 [maximum]</i>
11	<i>15.01—16.50 . . .</i>	<i>11</i>	<i>37.51—39.00 . . .</i>	<i>26</i>
12	<i>16.51—18.00 . . .</i>	<i>12</i>	<i>39.01—40.50 . . .</i>	<i>27</i>
13	<i>18.01—19.50 . . .</i>	<i>13</i>	<i>40.51—42.00 . . .</i>	<i>28</i>
14	<i>19.51—21.00 . . .</i>	<i>14</i>	<i>42.01—43.50 . . .</i>	<i>29</i>
15	<i>21.01—22.50 . . .</i>	<i>15</i>	<i>43.51—45.00 . . .</i>	<i>30</i>
16	<i>22.51—24.00 . . .</i>	<i>16</i>	[<i>45.01—46.50 . . .</i>	31]
16A			<i>45.01—47.50 . . .</i>	<i>31</i>
17	<i>24.01—25.50 . . .</i>	<i>17</i>	[<i>46.51—48.00 . . .</i>	32]
17A			<i>47.51—50.00 . . .</i>	<i>32</i>
18	<i>25.51—27.00 . . .</i>	<i>18</i>	[<i>48.01—49.50 . . .</i>	33]
18A			<i>50.01—52.50 . . .</i>	<i>33</i>
19	<i>27.01—28.50 . . .</i>	<i>19</i>	[<i>49.51—51.00 . . .</i>	34]
19A			<i>52.51—55.00 . . .</i>	<i>34</i>
20	<i>28.51—30.00 . . .</i>	<i>20</i>	[<i>51.01—52.50 . . .</i>	35]
20A			<i>55.01—57.50 . . .</i>	<i>35</i>
21	<i>30.01—31.50 . . .</i>	<i>21</i>	[<i>52.51—54.00 . . .</i>	36]
21A			<i>57.51—60.00 . . .</i>	<i>36</i>
22	<i>31.51—33.00 . . .</i>	<i>22</i>	[<i>54.01—55.50 . . .</i>	37]
22A			<i>60.01—62.50 . . .</i>	<i>37</i>
23	<i>33.01—34.50 . . .</i>	<i>23</i>	[<i>55.51—57.00 . . .</i>	38]
23A			<i>62.51—65.00 . . .</i>	<i>38</i>
24	<i>34.51—36.00 . . .</i>	<i>24</i>	[<i>57.01—58.50 . . .</i>	39]
24A			<i>65.01—67.50 . . .</i>	<i>39</i>
25			[<i>58.51 or more . .</i>	40 maximum]
25A			<i>67.51 and over . .</i>	<i>40 maximum</i>

26 This compensation shall be paid during the period of such disability,
27 not, however, beyond 300 weeks.

28 b. For disability total in character and permanent in quality, [66 $\frac{2}{3}$ %
29 of the wages] *weekly compensation shall be paid based upon the weekly wage*
30 *received at the time of injury, subject to a maximum compensation of [\$30.00]*
31 *[\$35.00] \$40.00 per week and a minimum of \$10.00 per week in accordance with*
32 *the "Wage and Compensation Schedule" set forth in paragraph a of this sec-*
33 *tion but expressly subject to the provisions of Revised Statutes 34:15-37. This*
34 *compensation shall be paid for a period of 450 weeks, at which time compensa-*
35 *tion payments shall cease unless the employee shall have submitted to such*
36 *physical or educational rehabilitation as may have been ordered by the*
37 *rehabilitation commission, and can show that because of such disability it is*
38 *impossible for him to obtain wages or earnings equal to those earned at the*
39 *time of the accident, in which case further weekly payments shall be made*
40 *during the period of such disability, the amount thereof to be the previous*
41 *weekly compensation payment diminished by that portion thereof that the*
42 *wage, or earnings, he is then able to earn, bears to the wages received at the*
43 *time of the accident. If his wages or earnings equal or exceed wages received*
44 *at the time of the accident, then his compensation rate shall be reduced to \$5.00.*
45 *In calculating compensation for this extension beyond 450 weeks the*
46 *minimum provision of \$10.00 shall not apply. This extension of compensation*
47 *payments beyond 450 weeks shall be subject to such periodic reconsidera-*
48 *tions and extensions as the case may require, and shall apply only to dis-*
49 *ability total in character and permanent in quality, and shall not apply to any*
50 *accident occurring prior to July 4, 1923.*

51 c. For disability partial in character [, but] *and permanent in quality,*
52 *[the] weekly compensation shall be paid [based upon the extent of such dis-*
53 *ability. In cases included in the following schedule the compensation shall be*
54 *that named in the schedule, to wit] [66 $\frac{2}{3}$ % of] based upon the weekly*
55 *wages received at the time of the injury, subject to a maximum compensa-*
56 *tion of \$35.00 per week and a minimum of \$10.00 per week in accordance with*

57 the "Wage and Compensation Schedule" set forth in paragraph "a" of this
 57A section, but expressly subject to the provisions of Revised Statutes 34:15-37,
 57B and shall be paid to the employee for the period named in the following
 57C schedule (subparagraphs 1 to 23 inclusive):

<i>Member Lost</i>	<i>Number of Weeks' Compensation</i>
58 1. <i>Thumb</i>	75
59 2. <i>First finger (commonly called index finger)</i>	50
60 3. <i>Second finger</i>	40
61 4. <i>Third finger</i>	30
62 5. <i>Fourth finger (commonly called little finger)</i>	20
63 6. <i>Great toe</i>	40
64 7. <i>Toe, other than a great toe</i>	15
65 8. <i>Hand, or thumb and first and second fingers (on 1</i>	
66 <i>hand) or 4 fingers (on 1 hand)</i>	230
67 9. <i>Arm</i>	300
68 10. <i>Foot</i>	200
69 11. <i>Leg</i>	275

70 [d. For the loss of the thumb, 66 $\frac{2}{3}$ % of daily wages during 75 weeks.]

71 [e. For the loss of the first finger, commonly called index finger, 66 $\frac{2}{3}$ %
 72 of daily wages during 50 weeks.]

73 [f. For the loss of a second finger, 66 $\frac{2}{3}$ % of daily wages during 40
 74 weeks.]

75 [g. For the loss of a third finger, 66 $\frac{2}{3}$ % of daily wages during 30 weeks.]

76 [h. For the loss of a fourth finger, commonly called little finger, 66 $\frac{2}{3}$ %
 77 of daily wages during 20 weeks.]

78 [i] 12. The loss of the first phalange of the thumb or of any finger shall
 79 be considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
 80 compensation shall be for $\frac{1}{2}$ of the periods of time above specified. The loss
 81 of any portion of the thumb or any finger between the terminal joint and the
 82 end thereof shall be compensated for a like proportion of the period of time
 83 prescribed for the loss of the first phalange of such member.

84 **[j]** 13. The loss of the first phalange and any portion of the second shall
 85 be considered as the loss of the entire finger or thumb, but in no case shall
 86 the amount received for more than 1 finger exceed the amount provided in this
 87 schedule for the loss of a hand.

88 **[k.** For the loss of a great toe, 66⅔% of daily wages during 40 weeks.]

89 **[l.** For the loss of 1 of the toes other than a great toe, 66⅔% of daily
 90 wages during 15 weeks.]

91 **[m]** 14. The loss of the first phalange of any toe shall be considered to
 92 be equal to the loss of ½ of such toe, and compensation shall be for ½ of the
 93 period of time above specified.

94 **[n]** 15. The loss of the first phalange and any portion of the second shall
 95 be considered as the loss of the entire toe.

96 **[o.** For the loss of a hand, or of the thumb and the first and second
 97 fingers (on 1 hand), or 4 fingers (on 1 hand), 66⅔% of the daily wages during
 98 230 weeks.]

99 **[p.** For the loss of an arm, 66⅔% of daily wages during 300 weeks.]

100 **[q.** For the loss of a foot, 66⅔% of daily wages during 200 weeks.]

101 **[r.** For the loss of a leg, 66⅔% of daily wages during 275 weeks.]

102 **[s]** 16. For the loss of vision of an eye, [66⅔% of daily wages during
 103 150 weeks] 200 weeks.

104 **[ss]** 17. For the enucleation of an eye, [66⅔% of daily wages during]
 105 25 weeks, in addition to such compensation, if any, as may be allowable under
 106 [subsection] subparagraph [s] 16.

107 **[t]** 18. For the loss of a natural tooth, [66⅔% of daily wages for] 4
 108 weeks for each tooth lost.

109 **[u]** 19. For the total loss of hearing in 1 ear, [66⅔% of daily wages
 110 during] 60 weeks. For the total loss of hearing in both ears by 1 accident,
 111 [66⅔% of daily wages during] 200 weeks.

112 **[v]** 20. The loss of both hands, or both arms, or both feet, or both legs,
 113 or both eyes, or any 2 thereof as the result of any 1 accident, shall con-
 114 stitute total and permanent disability to be compensated according to the
 115 provisions of paragraph "b."

116 [**vv**] 21. Amputation between the elbow and the wrist shall be considered
117 as the equivalent of the loss of a hand and amputation at the elbow shall be
118 considered equivalent to the loss of the arm. Amputation between the knee
119 and ankle shall be considered as the equivalent of the loss of a foot, and
120 amputation at the knee shall be considered equivalent to the loss of the leg.

121 [**w**] 22. In all lesser or other cases involving permanent loss, or where
122 the usefulness of a member or any physical function is permanently impaired,
123 [the compensation shall be 66⅔% of daily wages, and] the duration of
124 compensation shall bear such relation to the specific periods of time stated
125 in the above schedule as the disabilities bear to those produced by the injuries
126 named in the schedule. In cases in which the disability is determined as a
127 percentage of total and permanent disability the duration of the compensation
128 shall be a corresponding portion of 550 weeks. Should the employer and
129 employee be unable to agree upon the amount of compensation to be paid in
130 cases not covered by the schedule, either party may appeal to the *Division of*
131 *Workmen's Compensation* [**bureau**] for a settlement of the controversy.

132 [**x**] 23. Where there is a traumatic hernia compensation will be allowed
133 if notice thereof is given by the claimant to the employer within 48 hours after
134 the occurrence of the hernia but any Sunday, Saturday or holiday shall be
135 excluded from this 48-hour period.

136 [**y**. The weekly compensation payments specified in this section are all
137 subject to the same limitation as to maximum and minimum as are stated in
138 paragraph "a" hereof.]

139 [*The provisions of this subsection shall be expressly subject to the provi-*
140 *sions of Revised Statutes 34:15-37.*]

141 *d. If previous loss of function to the body, head, a member or an organ,*
142 *due to any previous compensable accident or accidents, is established by*
143 *competent evidence, and subsequently an injury arising out of and in the*
144 *course of an employment occurs to that part of the body, head, member or*
145 *organ, where there was a previous loss, then and in such case, the employer*
146 *or his insurance carrier at the time of the subsequent injury shall not be*

147 liable for any loss for which compensation has previously been paid or
 148 awarded. In either event, credit shall be given the employer or his insurance
 149 carrier to the extent of the previous loss for which compensation has been paid.

150 [z] c. In case of the death of the person from any cause other than the
 151 accident or occupational disease, during the period of payments for permanent
 152 injury, the remaining payments shall be paid to such of his or her dependents
 153 as are included in the provisions of said section 34:15-13 or, if no dependents,
 154 the remaining amount due, but not exceeding [\$250.00] \$400.00, shall be paid
 155 in a lump sum to the proper person for funeral expenses; but no compensa-
 156 tion shall be due any other person than the injured employee on account of
 157 compensation being paid in excess of 450 weeks on account of disability total
 158 in character and permanent in quality as provided by paragraph "b" of this
 159 section.

1 3. Section 34:15-13 of the Revised Statutes is amended to read as
 2 follows:

3 34:15-13. [In] Except as hereinafter provided, in case of death, com-
 4 pensation shall be computed, but not distributed, on the following basis:

5 a. For 1 dependent, 35% of wages.

6 b. For 2 dependents, 40% of wages.

7 c. For 3 dependents, 45% of wages.

8 d. For 4 dependents, 50% of wages.

9 e. For 5 dependents, 55% of wages.

10 f. For 6 or more dependents, 60% of wages.

11 g. The term "dependents" shall apply to and include any or all of the
 12 following who are dependent upon the deceased at the time of accident or
 13 the occurrence of occupational disease, or at the time of death, namely: Hus-
 14 band, wife, parents, stepparents, grandparents, children, stepchildren, grand-
 15 children, child in esse, posthumous child, illegitimate children,
 16 brothers, sisters, half brothers, half sisters, niece, nephew. Legally
 17 adopted children shall, in every particular, be considered as natural
 17A children. Dependency shall be conclusively presumed as to the de-

18 cedent's widow and natural children under 18 years of age who were
19 actually a part of the decedent's household at the time of his death. Every
20 provision of this article applying to one class shall be equally applicable to
21 the other. Should any dependent of a deceased employee die during the
22 period covered by such weekly payments [or should the widow of a de-
23 ceased employee remarry during such period,] the right of such dependent
24 [or of such widow] to compensation under this section shall cease *but should*
25 *the widow of a deceased employee remarry during such period and before*
26 *the total compensation is paid, she shall be entitled to receive the remain-*
27 *der of the compensation which would have been due her had she not remar-*
28 *ried, or \$1,000.00, whichever is the lesser.* The foregoing schedule applies
29 only to persons wholly dependent, and in the case of persons only partially
30 dependent, except in the case of the widow and children who were actually
31 a part of the decedent's household at the time of his death, the compensa-
32 tion shall be such proportion of the scheduled percentage as the amounts
33 actually contributed to them by the deceased for their support constituted
34 of his total wages and the provision as to a \$10.00 minimum shall not apply
35 to such compensation. In determining the number of dependents, where the
36 deceased employee was a minor, the number of persons dependent upon the
37 deceased employee shall be determined in the same way as if the deceased
38 employee were an adult, notwithstanding any rule of law as to the person
39 entitled to a minor's wages.

40 h. Compensation shall be computed upon the foregoing basis. Distribu-
41 tion shall be made among dependents, if more than 1, according to the
42 order of the Division of Workmen's Compensation, which shall, when ap-
43 plied to for that purpose determine, upon the facts being presented to it,
44 the proportion to be paid to or on behalf of each dependent according to
45 the relative dependency. Payment on behalf of infants shall be made to the
46 surviving parent, if any, or to the statutory or testamentary guardian.

47 i. If death results from the accident or occupational disease, whether
48 there be dependents or not, expenses of the last sickness of the deceased

49 employee shall be paid in accordance with the provisions for medical and
50 hospital service as set forth in section 34:15-15 of this Title. Also the cost
51 of burial, not to exceed ~~[\$250.00]~~ \$400.00, shall be paid to the dependent
52 or other person having paid said costs of burial. In the event that the said
53 dependent or other person has paid less than ~~[\$250.00]~~ \$400.00 the said de-
54 pendent or other person shall be reimbursed in the amount paid and, if the
55 costs of burial exceed the amount so paid, the difference between the said
56 amount and ~~[\$250.00]~~ \$400.00 or so much thereof as may be necessary to
57 pay the costs of burial, shall be paid to the undertaker or embalmer. In the
58 event that no part of the costs of burial has been paid, the amount of such
59 cost of burial, not to exceed ~~[\$250.00]~~ \$400.00, shall be paid to the under-
60 taker or embalmer.

61 j. In computing compensation to those named in this section, except hus-
62 band, wife, parents and stepparents, only those under 18 or over 40 years
63 of age shall be included and then only for that period in which they are
64 under 18 or over 40; provided, however, that payments to such physically
65 or mentally deficient persons as are for such reason dependent shall be made
66 during the full compensation period of ~~[300]~~ 350 weeks.

67 k. The maximum compensation in case of death shall be ~~[\$30.00]~~
68 ~~[\$35.00]~~ \$40.00 per week and the minimum \$10.00 per week, except in the
69 case of partial dependency as provided in this section. This compensation
70 shall be paid during ~~[300]~~ 350 weeks and if at the expiration of ~~[300]~~ 350
71 weeks there shall be 1 or more dependents under 18 years of age compensa-
72 tion shall be continued for such dependents until they reach 18 years of age
73 at the schedule provided under paragraphs "a" to "f" of this section.

1 4. Section 34:15-16 of the Revised Statutes is amended to read as
2 follows:

3 34:15-16. Compensation for all classes of injuries shall run consecutively,
4 and not concurrently, except as provided *in this section and* in section
5 34:15-15 of this Title, as follows: First, medical and hospital services and
6 medicines as provided in said section 34:15-15. After the waiting period,

7 compensation during temporary disability. If total period of disability ex-
8 tends beyond 4 weeks, compensation to cover waiting period. Following both,
9 either or none of the above, compensation consecutively for each permanent
10 injury, *except that permanent disability, total or partial, shall not be*
11 *determined or awarded until after 26 weeks from the date of the employee's*
12 *final active medical treatment, or until after 26 weeks from the date of the*
13 *employee's return to work, whichever is earlier, or, if no time is lost or no*
14 *treatment is rendered, then permanent disability, total or partial, shall not*
14A *be determined or awarded until after 26 weeks from the date of the accident,*
14B *except in cases of amputation or enucleation or death from other cause within*
14C *that time and except when earlier determination of permanent disability is*
14D *waived by the employer or his insurance carrier. Nothing herein contained*
15 *shall prevent an employer or his insurance carrier from paying permanent*
16 *disability compensation voluntarily prior to the expiration of the 26 week*
17 *period.* Following any or all or none of the above, if death results from
18 the accident, expenses of last sickness and burial. Following which com-
19 pensation to dependents, if any.

20 Where an employer or his insurance carrier desires to pay for or furnish
21 medical, surgical, or hospital treatment, drugs, orthopedic or prosthetic ap-
22 pliances, after the date when payments under sections 34:15-12 and 34:15-13
23 of this Title have terminated, the employer or his insurance carrier may, in
24 writing, reserve the defense of the jurisdictional limitations provided by sec-
25 tions 34:15-27, 34:15-34, 34:15-41 and 34:15-51 of this Title; provided, that
26 the reservation is approved by a deputy [commissioner] director after ad-
27 vising the petitioner personally of his rights and of the effect of such reser-
28 vation.

1 5. Section 34:15-36 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-36. "Willful negligence" within the intent of this chapter shall
4 consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as
5 evidences reckless indifference to safety, or (3) intoxication, operating as the
6 proximate cause of injury.

7 "Employer" is declared to be synonymous with master, and includes
8 natural persons, partnerships, and corporations; "employee" is synonymous
9 with servant, and includes all natural persons who perform service for another
10 for financial consideration, exclusive of casual employments, which shall be
11 defined, if in connection with the employer's business, as employment the
12 occasion for which arises by chance or is purely accidental; or if not in con-
13 nection with any business of the employer, as employment not regular, pe-
14 riodic or recurring; provided, however, that forest fire wardens and forest fire
15 fighters employed by the State of New Jersey shall, in no event, be deemed
16 casual employees.

17 [A person engaged in the vending, selling or offering for sale or deliver-
18 ing directly to the general public newspapers, magazines or periodicals or
19 acting as sales agent or distributor as an independent contractor of or for any
20 such newspaper, magazine or periodical shall not be considered an employee
21 within the provisions of this chapter.]

1 [6. Section 34:15-40 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-40. Where a third person [or corporation] is liable to the em-
4 ployee [or his dependents] for an injury or death, the existence of a right
5 of compensation from the employer [or insurance carrier] under this stat-
6 ute shall not operate as a bar to the action of the employee [or his depend-
7 ents], nor be regarded as establishing a measure of damage therein. In the
8 event that the employee [or his dependents] shall recover and be paid from
9 the said third person [or corporation] or *his insurance carrier*, any sum in
10 release or in judgment on account of his or its liability to the injured em-
11 ployee, the liability of the employer under this statute thereupon shall be only
12 such as is hereinafter in this section provided.

13 (a) The obligation of the employer [or his insurance carrier] under
14 this statute to make compensation payments shall continue until the pay-
15 ment, if any, by such third person [or corporation] or *his insurance carrier*
16 is made.

17 (b) If the sum recovered by the employee from the third person [or
18 corporation] *or his insurance carrier* is equivalent to or greater than the
19 liability of the employer [or his insurance carrier] under this statute, the
20 employer [or his insurance carrier] shall be released from such liability and
21 shall be entitled to be reimbursed, as hereinafter provided, for the medical
22 expenses incurred and compensation payments theretofore paid to the in-
23 jured employee [or his dependents] less employee's expenses of suit and
24 attorney's fee as hereinafter defined.

25 (c) If the sum recovered by the employee as aforesaid is less than the
26 liability of the employer [or his insurance carrier] under this statute, the
27 employer [or his insurance carrier] shall be liable for the difference, plus
28 the employee's expenses of suit and attorney's fee as hereinafter defined,
29 and shall be entitled to be reimbursed, as hereinafter provided for so much of
30 the medical expenses incurred and compensation payments theretofore paid
31 to the injured employee [or his dependents] as exceeds the amount of such
32 difference plus such employee's expenses of suit and attorney's fee.

33 (d) If at any time prior to the payment by the third person [or corpora-
34 tion] *or his insurance carrier* to the injured employee [or his dependents],
35 the employer [or his insurance carrier] shall serve notice, as hereinafter
36 provided, upon such third person [or corporation] *or his insurance carrier*
37 that compensation has been applied for by the injured employee [or his de-
38 pendents] it shall thereupon become the duty of such third person [or cor-
39 poration] *or his insurance carrier*, before making any payment to the injured
40 employee [or his dependents], to inquire from such employer [or his in-
41 surance carrier] the amount of medical expenses incurred and compensation
42 theretofore paid to the injured employee [or to his dependents]. Where such
43 notice shall have been served, it shall further become the duty of such third
44 person [or corporation] *or his insurance carrier*, before making any payment
45 as aforesaid, to inquire from such injured employee [or his dependents] the
46 amount of the expenses of suit and attorney's fee, or either of them in the
47 action or settlement of the claim against such third person [or corporation]

48 *or his insurance carrier.* Thereafter, out of that part of any amount about
49 to be paid in release or in judgment by such third person [or corporation]
50 *or his insurance carrier* on account of his or its liability to the injured em-
51 ployee, the employer [or his insurance carrier] shall be entitled to receive
52 from such third person [or corporation] *or his insurance carrier* so much
53 thereof as may be due the employer [or insurance carrier] pursuant to sub-
54 paragraph (b) or (c) of this section. Such sum shall be deducted by such
55 third person [or corporation] *or his insurance carrier* from the sum to be
56 paid in release or in judgment to the injured employee [or his dependents]
57 and shall be paid by such third [party or corporation] *person or his insur-*
58 *ance carrier* to the employer [or his insurance carrier]. Service of notice,
59 hereinbefore required to be made by the employer [or his insurance carrier]
60 upon such third person [or corporation] *or his insurance carrier*, shall be by
61 registered mail, return receipt and in [the] cases [of a corporation] *other*
62 *than an individual* shall be mailed to the registered office of such [corpora-
63 tion] *other person or his insurance carrier.*

64 (e) As used in this section, "expenses of suit" shall mean such expenses,
65 but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but
66 not in excess of 33 $\frac{1}{3}$ % of that part of the sum paid in release or in judgment
67 to the injured employee [or his dependents] by such third [party or cor-
68 poration] *person or his insurance carrier* to which the employer [or his in-
69 surance carrier] shall be entitled in reimbursement under the provisions of
70 this section, but on all sums in excess thereof, this percentage shall not be
71 binding.

72 (f) When an injured employee [or his dependents] fails within 1 year
73 of the accident to either effect a settlement with *the third person or his in-*
74 *surance carrier* or institute proceedings for recovery of damages for his in-
75 juries and loss against the third person [or corporation], the employer [or
76 his insurance carrier], 10 days after a written demand on the injured em-
77 ployee [or his dependents], can either effect a settlement with *the third*
78 *person or his insurance carrier* or institute proceedings against the third

79 person [or corporation] for the recovery of damages for the injuries and
80 loss sustained by such injured employee [or his dependents] and any settle-
81 ment made *with the third person or his insurance carrier* or proceedings had
82 and taken by such employer [or his insurance carrier] against such third
83 person [or corporation], and such right of action shall be only for such
84 right of action that the injured employee [or his dependents] would have
85 had against the third person [or corporation], and shall constitute a bar to
86 any further claim or action by the injured employee [or his dependents]
87 against the third person [or corporation]. If a settlement is effected be-
88 tween the employer [or his insurance carrier] and the third person [or cor-
89 poration] *or his insurance carrier*, or a judgment is recovered by the em-
90 ployer [or his insurance carrier] against the third person [or corporation]
91 for the injuries and loss sustained by the employee and if the amount secured
92 or obtained by the employer [or his insurance carrier] is in excess of the em-
93 ployer's obligation to the employee and the expense of suit, such excess shall
94 be paid to the employee [or his dependents]. The legal action contemplated
95 hereinabove shall be a civil action at law in the name of the injured employee
96 or by the employer [or insurance carrier] in the name of the employee to the
97-99 use of the employer [or insurance carrier], or by the proper party for the
100 benefit of the next of kin of the employee. Where an injured employee [or
101 his dependents have] *has* instituted proceedings for recovery of damages
102 for his injuries and loss against a third person [or corporation] and such
103 proceedings are dismissed for lack of prosecution, the employer [or insur-
104 ance carrier] shall, upon application made within 90 days thereafter, be en-
105 titled to have such dismissal set aside, and to continue the prosecution of
106 such proceedings in the name of the injured employee [or dependents] in
107 accordance with the provisions of this section.

108 (g) If such employee [or his dependents] effects a settlement with *the*
109 *third person or his insurance carrier* or institutes proceedings against the
110 third person [or corporation] prior to the service of notice *upon the third*
111 *person or his insurance carrier* of the compensation obligation of the em-

112 ployer [or his insurance carrier] or prior to the institution of any proceed-
113 ings against the third person [or corporation] by the employer [or his in-
114 surance carrier] for the injuries and loss sustained by such employee [or
115 his dependents], such employer [or his insurance carrier] is barred from
116 instituting any action or proceedings against the third person [or corpora-
117 tion] for the injuries and loss sustained by such employee [or his depend-
118 ents].

119 *Any reference in this section to the employer shall for the purposes of*
120 *this section be deemed to include his insurance carrier, if any. Any refer-*
121 *ence in this section to an employee shall for the purposes of this section be*
122 *deemed to include his dependents, if any.]*

1 6. Section 34:15-40 of the Revised Statutes is amended to read as
2 follows:

3 34:15-40. Where a third person [or corporation] is liable to the em-
4 ployee or his dependents for an injury or death, the existence of a right of
5 compensation from the employer or insurance carrier under this statute
6 shall not operate as a bar to the action of the employee or his dependents,
7 nor be regarded as establishing a measure of damage therein. In the event
8 that the employee or his dependents shall recover and be paid from the said
9 third person [or corporation] or his insurance carrier, any sum in release
10 or in judgment on account of his or its liability to the injured employee or
11 his dependents, the liability of the employer under this statute thereupon shall
12 be only such as is hereinafter in this section provided.

13 (a) The obligation of the employer or his insurance carrier under this
14 statute to make compensation payments shall continue until the payment, if
15 any, by such third person [or corporation] or his insurance carrier is made.

16 (b) If the sum recovered by the employee or his dependents from the
17 third person [or corporation] or his insurance carrier is equivalent to or
18 greater than the liability of the employer or his insurance carrier under this
19 statute, the employer or his insurance carrier shall be released from such lia-
20 bility and shall be entitled to be reimbursed, as hereinafter provided, for the

21 *medical expenses incurred and compensation payments theretofore paid to the*
22 *injured employee or his dependents less employee's expenses of suit and*
23 *attorney's fee as hereinafter defined.*

24 (c) *If the sum recovered by the employee or his dependents as aforesaid*
25 *is less than the liability of the employer or his insurance carrier under this*
26 *statute, the employer or his insurance carrier shall be liable for the difference,*
27 *plus the employee's expenses of suit and attorney's fee as hereinafter defined,*
28 *and shall be entitled to be reimbursed, as hereinafter provided for so much*
29 *of the medical expenses incurred and compensation payments theretofore*
30 *paid to the injured employee or his dependents as exceeds the amount of*
31 *such difference plus such employee's expenses of suit and attorney's fee.*

32 (d) *If at any time prior to the payment by the third person [or corpora-*
33 *tion] or his insurance carrier to the injured employee or his dependents, the*
34 *employer or his insurance carrier shall serve notice, as hereinafter provided,*
35 *upon such third person [or corporation] or his insurance carrier that compen-*
36 *sation has been applied for by the injured employee or his dependents it shall*
37 *thereupon become the duty of such third person [or corporation] or his insur-*
38 *ance carrier, before making any payment to the injured employee or his de-*
39 *pendents, to inquire from such employer or his insurance carrier the amount*
40 *of medical expenses incurred and compensation theretofore paid to the injured*
41 *employee or to his dependents. Where such notice shall have been served, it*
42 *shall further become the duty of such third person [or corporation] or his in-*
43 *surance carrier, before making any payment as aforesaid, to inquire from*
44 *such injured employee or his dependents the amount of the expenses of suit*
45 *and attorney's fee, or either of them in the action or settlement of the claim*
46 *against such third person [or corporation] or his insurance carrier. There-*
47 *after, out of that part of any amount about to be paid in release or in judg-*
48 *ment by such third person [or corporation] or his insurance carrier on*
49 *account of his or its liability to the injured employee or his dependents, the*
50 *employer or his insurance carrier shall be entitled to receive from such third*
51 *person [or corporation] or his insurance carrier so much thereof as may be*

52 due the employer or insurance carrier pursuant to subparagraph (b) or (c)
53 of this section. Such sum shall be deducted by such third person [or corpora-
54 tion] or his insurance carrier from the sum to be paid in release or in
55 judgment to the injured employee or his dependents and shall be paid by
56 such third [party or corporation] person or his insurance carrier to the
57 employer or his insurance carrier. Service of notice, hereinbefore required
58 to be made by the employer or his insurance carrier upon such third person
59 [or corporation] or his insurance carrier, shall be by registered mail, return
60 receipt and in [the] cases [of a corporation] other than an individual shall
61 be mailed to the registered office of such [corporation] other third person or
62 his insurance carrier.

63 (c) As used in this section, "expenses of suit" shall mean such expenses,
64 but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but not
65 in excess of 33 1/3% of that part of the sum paid in release or in judgment to
66 the injured employee or his dependents by such third [party or corporation]
67 person or his insurance carrier to which the employer or his insurance carrier
68 shall be entitled in reimbursement under the provisions of this section, but on
69 all sums in excess thereof, this percentage shall not be binding.

70 (f) When an injured employee or his dependents fail within 1 year of the
71 accident to either effect a settlement with the third person or his insurance
72 carrier or institute proceedings for recovery of damages for his injuries and
73 loss against the third person [or corporation], the employer or his insurance
74 carrier, 10 days after a written demand on the injured employee or his de-
75 pendents, can either effect a settlement with the third person or his insurance
76 carrier or institute proceedings against the third person [or corporation] for
77 the recovery of damages for the injuries and loss sustained by such injured
78 employee or his dependents and any settlement made with the third person
79 or his insurance carrier or proceedings had and taken by such employer or
80 his insurance carrier against such third person [or corporation], and such
81 right of action shall be only for such right of action that the injured em-
82 ployee or his dependents would have had against the third person [or corpora-

83 tion], and shall constitute a bar to any further claim or action by the injured
84 employee or his dependents against the third person [or corporation]. If a
85 settlement is effected between the employer or his insurance carrier and the
86 third person [or corporation] or his insurance carrier, or a judgment is
87 recovered by the employer or his insurance carrier against the third person
88 [or corporation] for the injuries and loss sustained by the employee or his
89 dependents and if the amount secured or obtained by the employer or his
90 insurance carrier is in excess of the employer's obligation to the employee or
91 his dependents and the expense of suit, such excess shall be paid to the em-
92 ployee or his dependents. The legal action contemplated hereinabove shall
93 be a civil action at law in the name of the injured employee or by the em-
94 ployer or insurance carrier in the name of the employee to the use of the
95 employer or insurance carrier, or by the proper party for the benefit of the
96 next of kin of the employee. Where an injured employee or his dependents
97 have instituted proceedings for recovery of damages for his injuries and loss
98 against a third person [or corporation] and such proceedings are dismissed
99 for lack of prosecution, the employer or insurance carrier shall, upon applica-
100 tion made within 90 days thereafter, be entitled to have such dismissal set
101 aside, and to continue the prosecution of such proceedings in the name of the
102 injured employee or dependents in accordance with the provisions of this
102A section.

103 (g) If such employee or his dependents effect a settlement with the third
104 person or his insurance carrier or institute proceedings against the third per-
105 son [or corporation] prior to the service of notice upon the third person or
106 his insurance carrier of the compensation obligation of the employer or his
107 insurance carrier or prior to the institution of any proceedings against the
108 third person [or corporation] by the employer or his insurance carrier for
109 the injuries and loss sustained by such employee or his dependents, such em-
110 ployer or his insurance carrier is barred from instituting any action or
111 proceedings against the third person [or corporation] for the injuries and
112 loss sustained by such employee or his dependents.

113 *The words "third person" as used in this section include corporations,*
114 *companies, associations, societies, firms, partnerships and joint stock com-*
115 *panies as well as individuals.*

1 7. Section 34:15-53 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-53. Within [10] 20 days after the filing of an answer, or the ex-
4 piration of the time for filing an answer if no answer is filed, the secretary
5 of the [bureau] *division* shall fix a time and place for hearing the petition,
6 or shall send the petition and answer or a transcript of the petition and
7 answer to the [commissioner] *director*, a deputy [commissioner] *director* or
8 1 of the referees, in which case such [commissioner] *director*, deputy
9 [commissioner] *director* or referee, within [15] 20 days after the filing of
10 the answer, shall fix a time and place for the hearing of the petition. Such
11 time shall be not less than 4 weeks nor more than 6 weeks after the filing of
12 the petition, *provided however, that in cases where the extent of permanent*
13 *disability, total or partial, is an issue, the determination of such issue shall*
14 *be deferred as provided in section 34:15-16 of this Title.* The petition shall
15 be heard either in the county in which the injury occurred or in which the
16 petitioner or [defendant] *respondent* resides, or in which the [defendant's]
17 *respondent's* place of business is located, or in which the [defendant] *re-*
18 *spondent* may be served with process. When a time and place has been
19 fixed for such hearing, the [commissioner] *director*, deputy [commissioner]
20 *director* or the referee to whom the cause has been referred shall give at least
21 10 days' notice to each party of the time and place of hearing. The [com-
22 missioner] *director*, deputy [commissioner] *director* or any referee to whom
23 a cause has been referred, shall have power to adjourn the hearing thereof
24 from time to time in his discretion.

1 8. Section 34:15-66 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-66. Either party may appeal from the judgment of the director,
4 deputy director, or referee, to the County Court of the county in which the
5 accident occurred or, if the accident occurred out of the State, then of the
6 county wherein the hearing was had, by filing with the secretary of the divi-
7 sion, and with the clerk of such county, a notice of appeal. Such notice
8 shall be filed within [30] 45 days after the judgment has been rendered.
9 The judgment entered in the County Court on any such appeal shall be con-
10 clusive and binding, and proceedings thereon shall only be for the recovery
11 of moneys thereby determined to be due. Costs may be awarded by the
12 court in its discretion, and when so awarded the same costs shall be allowed,
13 taxed and collected as are allowed, taxed and collected for like services in
14 the County Court. In case the respondent, in said appeal, is unable to pay
15 counsel, the court shall assign counsel to represent him. Nothing herein
16 contained shall be construed as limiting the jurisdiction of the Superior
17 Court to review any matter through a proceeding in lieu of prerogative writ
18 or as limiting the jurisdiction of the Supreme Court.

1 9. An accident to an employee causing his injury or death, suffered while
2 engaged in his employment but resulting from horseplay or skylarking on the
3 part of a fellow employee, not instigated or taken part in by the employee who
4 suffers the accident, shall be construed to have arisen out of and in the course
5 of the employment of such employee and shall be compensable under the act
6 hereby supplemented accordingly.

1 10. Whenever as the result of an accident for which compensation is pay-
2 able to any employee of any employer under the article to which this act is a
3 supplement, such employee sustains damage to, or destruction of, a prosthetic
4 device, hearing aid, artificial member, dental appliance or [his] eyeglasses,
5 [clothing or personal effects,] it shall be the obligation of the employer to re-
6 pair or replace the same or to make payment of the cost or value thereof, upon
7 claim made therefor, which obligation shall be in addition to the obligation for
8 the payment of the compensation payable to said employee for injuries sus-
9 tained as a result of such accident.

1 【11. Whenever a physician, surgeon or hospital shall, at the instance of
2 an employer or his insurance carrier, render or furnish medical or hospital
3 service to an employee, it shall be the duty of the employer and the insurance
4 carrier, if any, to obtain from the physician, surgeon or hospital a detailed re-
5 port in writing of the medical history of the employee and of the examination
6 and treatment of the employee, including the findings, diagnoses, estimates,
7 prognoses and treatments advised and given, if any, and to furnish the em-
8 ployee with such report or reports or a true copy of the same, within 10 days
9 after the rendering or furnishing of any such medical or hospital service.】

1 【12. The Division of Workmen's Compensation shall enforce the pro-
2 visions of section 11 of this act and the director or any deputy director of the
3 division shall, upon application made for the purpose, order compliance in
4 any particular case or instance.】

1 【13. Any employer or insurance carrier failing to comply with the pro-
2 visions of section 11 of this act shall be precluded from offering any defense or
3 opposition to the employee's claim for compensation, unless it is shown to
4 the satisfaction of the said director or deputy director that the employer or
5 insurance carrier is without fault and shall comply with the provisions of
6 this act.】

1 【14. Any employer or insurance carrier shall also be subject to a penalty
2 for each noncompliance of the provisions of section 11 of this act, of not less
3 than \$100.00 or more than \$500.00, to be fixed by the Commissioner of Labor
4 and Industry, which shall be recoverable by a suit at law by the said com-
5 missioner in the name of the State of New Jersey.】

1 【15.】 11. This act shall take effect January 1, 1957.

CHAPTER 141 LAWS OF N. J. 1956

APPROVED 7/26/56

(CORRECTED COPY)

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 585

STATE OF NEW JERSEY

INTRODUCED JUNE 28, 1956

By Messrs. MILLS, LAZZIO, MACDONALD and MINTZ

(Without Reference)

AN ACT concerning workmen's compensation, amending sections 34:15-10, 34:15-12, 34:15-13, 34:15-16, 34:15-36, 34:15-40, 34:15-53 and 34:15-66 and supplementing chapter 15 of Title 34 of the Revised Statutes.

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

1 1. Section 34:15-10 of the Revised Statutes is amended to read as
2 follows:

3 34:15-10. In the employment of minors, this article shall be presumed
4 to apply unless the notice be given by or to the parent or guardian of the
5 minor. If the injured employee at the time of the accident or compensable
6 occupational disease is a minor under 14 years of age employed in viola-
7 tion of the labor law or a minor between 14 and 18 years of age employed,
8 permitted or suffered to work without an employment certificate or special
9 permit if required by law or at an occupation prohibited at the minor's age
10 by law, a compensation or death benefit shall be payable to the employee
11 or his dependents which shall be double the amount payable under the
12 schedules provided in sections 34:15-12 and 34:15-13 of this Title.

13 The possession of such duly issued employment certificate shall be con-
14 clusive evidence for an employer that the minor has reached the age certi-
15 fied to therein and no extra compensation shall be payable to any minor

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

16 engaged in an employment allowed by the law for the age and sex certified
17 to in such certificate. If the certificate presented by the employee as one
18 issued to him shall have been really issued to another child and the real
19 age of the employee shall be such that his employment in any capacity
20 or in the particular capacity he was employed by the employer was pro-
21 hibited and if the employer shall show to the satisfaction of the *division*
22 of workmen's compensation [bureau] that he accepted the certificate in
23 good faith as having been issued to the employee and could not have, de-
24 spite reasonable diligence, discovered the fraud, in such event no extra com-
25 pensation shall be paid to the employee illegally employed.

26 The employer alone and not the insurance carrier shall be liable for
27 the extra compensation or death benefit which is over and above the amount
28 of the compensation or death benefit provided under said sections 34:15-12
29 or 34:15-13. Any provision in an insurance policy undertaking to relieve
30 an employer from the liability for the extra compensation or extra death
31 benefit shall be void.

32 Nothing in this chapter contained shall deprive an infant under the age
33 of 18 years of the right or rights now existing to recover damages in a
34 common law or other appropriate action or proceeding for injuries received
35 by reason of the negligence of his or her master.

36 Nothing in this section regarding the payment of a compensation or
37 death benefit in double the amount payable under the schedules provided
38 in sections 34:15-12 and 34:15-13 of this Title shall apply to employees, of
39 the age of 18 years or under, employed in summer camps operated by the
40 Boy Scouts of America, the Girl Scouts of America, the Knights of Colum-
41 bus, the Young Men's Christian Association, the Young Women's Christian
42 Association, the Young Men's Hebrew Association, or any domestic corpora-
43 tion organized solely for religious or charitable purposes.

1 2. Section 34:15-12 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-12. Following is a schedule of compensation:

4 a. For injury producing temporary disability, [66⅔% of the wages]
 5 weekly compensation shall be paid based upon the weekly wage received at
 6 the time of the injury, subject to a maximum compensation of [\$30.00] \$40.00
 7 per week and a minimum of \$10.00 per week in accordance with the following
 8 "Wage and Compensation Schedule," but expressly subject to the provisions
 9 of Revised Statutes 34:15-37:

WAGE AND COMPENSATION SCHEDULE

	<i>Weekly Weekly Wage</i>	<i>Weekly Compensation</i>	<i>Weekly Wage</i>	<i>Weekly Compensation</i>
10	\$15.00 or less	\$10 minimum	\$36.01—37.50 . . .	\$25 [maximum]
11	15.01—16.50 . . .	11	37.51—39.00 . . .	26
12	16.51—18.00 . . .	12	39.01—40.50 . . .	27
13	18.01—19.50 . . .	13	40.51—42.00 . . .	28
14	19.51—21.00 . . .	14	42.01—43.50 . . .	29
15	21.01—22.50 . . .	15	43.51—45.00 . . .	30
16	22.51—24.00 . . .	16	[45.01—46.50 . . .	31]
16A			45.01—47.50 . . .	31
17	24.01—25.50 . . .	17	[46.51—48.00 . . .	32]
17A			47.51—50.00 . . .	32
18	25.51—27.00 . . .	18	[48.01—49.50 . . .	33]
18A			50.01—52.50 . . .	33
19	27.01—28.50 . . .	19	[49.51—51.00 . . .	34]
19A			52.51—55.00 . . .	34
20	28.51—30.00 . . .	20	[51.01—52.50 . . .	35]
20A			55.01—57.50 . . .	35
21	30.01—31.50 . . .	21	[52.51—54.00 . . .	36]
21A			57.51—60.00 . . .	36
22	31.51—33.00 . . .	22	[54.01—55.50 . . .	37]
22A			60.01—62.50 . . .	37
23	33.01—34.50 . . .	23	[55.51—57.00 . . .	38]
23A			62.51—65.00 . . .	38
24	34.51—36.00 . . .	24	[57.01—58.50 . . .	39]
24A			65.01—67.50 . . .	39
25			[58.51 or more . .	40 maximum]
25A			67.51 and over . .	40 maximum

26 This compensation shall be paid during the period of such disability,
27 not, however, beyond 300 weeks.

28 b. For disability total in character and permanent in quality, [66⅔%
29 of the wages] *weekly compensation shall be paid based upon the weekly wage*
30 *received at the time of injury, subject to a maximum compensation of [\$30.00]*
31 *[\$35.00] \$40.00 per week and a minimum of \$10.00 per week in accordance with*
32 *the "Wage and Compensation Schedule" set forth in paragraph a of this sec-*
33 *tion but expressly subject to the provisions of Revised Statutes 34:15-37. This*
34 *compensation shall be paid for a period of 450 weeks, at which time compensa-*
35 *tion payments shall cease unless the employee shall have submitted to such*
36 *physical or educational rehabilitation as may have been ordered by the*
37 *rehabilitation commission, and can show that because of such disability it is*
38 *impossible for him to obtain wages or earnings equal to those earned at the*
39 *time of the accident, in which case further weekly payments shall be made*
40 *during the period of such disability, the amount thereof to be the previous*
41 *weekly compensation payment diminished by that portion thereof that the*
42 *wage, or earnings, he is then able to earn, bears to the wages received at the*
43 *time of the accident. If his wages or earnings equal or exceed wages received*
44 *at the time of the accident, then his compensation rate shall be reduced to \$5.00.*
45 *In calculating compensation for this extension beyond 450 weeks the*
46 *minimum provision of \$10.00 shall not apply. This extension of compensation*
47 *payments beyond 450 weeks shall be subject to such periodic reconsidera-*
48 *tions and extensions as the case may require, and shall apply only to dis-*
49 *ability total in character and permanent in quality, and shall not apply to any*
50 *accident occurring prior to July 4, 1923.*

51 c. For disability partial in character [, but] *and permanent in quality,*
52 *[the] weekly compensation shall be paid [based upon the extent of such dis-*
53 *ability. In cases included in the following schedule the compensation shall be*
54 *that named in the schedule, to wit] [66 2/3% of] based upon the weekly*
55 *wages received at the time of the injury, subject to a maximum compensa-*
56 *tion of \$35.00 per week and a minimum of \$10.00 per week in accordance with*

57 the "Wage and Compensation Schedule" set forth in paragraph "a" of this
 57A section, but expressly subject to the provisions of Revised Statutes 34:15-37,
 57B and shall be paid to the employee for the period named in the following
 57C schedule (subparagraphs 1 to 23 inclusive):

<i>Member Lost</i>	<i>Number of Weeks' Compensation</i>
58 1. <i>Thumb</i>	75
59 2. <i>First finger (commonly called index finger)</i>	50
60 3. <i>Second finger</i>	40
61 4. <i>Third finger</i>	30
62 5. <i>Fourth finger (commonly called little finger)</i>	20
63 6. <i>Great toe</i>	40
64 7. <i>Toe, other than a great toe</i>	15
65 8. <i>Hand, or thumb and first and second fingers (on 1</i>	
66 <i>hand) or 4 fingers (on 1 hand)</i>	230
67 9. <i>Arm</i>	300
68 10. <i>Foot</i>	200
69 11. <i>Leg</i>	275

70 [d. For the loss of the thumb, 66 $\frac{2}{3}$ % of daily wages during 75 weeks.]

71 [e. For the loss of the first finger, commonly called index finger, 66 $\frac{2}{3}$ %
 72 of daily wages during 50 weeks.]

73 [f. For the loss of a second finger, 66 $\frac{2}{3}$ % of daily wages during 40
 74 weeks.]

75 [g. For the loss of a third finger, 66 $\frac{2}{3}$ % of daily wages during 30 weeks.]

76 [h. For the loss of a fourth finger, commonly called little finger, 66 $\frac{2}{3}$ %
 77 of daily wages during 20 weeks.]

78 [i] 12. The loss of the first phalange of the thumb or of any finger shall
 79 be considered to be equal to the loss of $\frac{1}{2}$ of such thumb or finger, and the
 80 compensation shall be for $\frac{1}{2}$ of the periods of time above specified. The loss
 81 of any portion of the thumb or any finger between the terminal joint and the
 82 end thereof shall be compensated for a like proportion of the period of time
 83 prescribed for the loss of the first phalange of such member.

84 **[j]** 13. The loss of the first phalange and any portion of the second shall
 85 be considered as the loss of the entire finger or thumb, but in no case shall
 86 the amount received for more than 1 finger exceed the amount provided in this
 87 schedule for the loss of a hand.

88 **[k.** For the loss of a great toe, 66⅔% of daily wages during 40 weeks.]

89 **[l.** For the loss of 1 of the toes other than a great toe, 66⅔% of daily
 90 wages during 15 weeks.]

91 **[m]** 14. The loss of the first phalange of any toe shall be considered to
 92 be equal to the loss of ½ of such toe, and compensation shall be for ½ of the
 93 period of time above specified.

94 **[n]** 15. The loss of the first phalange and any portion of the second shall
 95 be considered as the loss of the entire toe.

96 **[o.** For the loss of a hand, or of the thumb and the first and second
 97 fingers (on 1 hand), or 4 fingers (on 1 hand), 66⅔% of the daily wages during
 98 230 weeks.]

99 **[p.** For the loss of an arm, 66⅔% of daily wages during 300 weeks.]

100 **[q.** For the loss of a foot, 66⅔% of daily wages during 200 weeks.]

101 **[r.** For the loss of a leg, 66⅔% of daily wages during 275 weeks.]

102 **[s]** 16. For the loss of vision of an eye, [66⅔% of daily wages during
 103 150 weeks] 200 weeks.

104 **[ss]** 17. For the enucleation of an eye, [66⅔% of daily wages during]
 105 25 weeks, in addition to such compensation, if any, as may be allowable under
 106 [subsection] subparagraph [s] 16.

107 **[t]** 18. For the loss of a natural tooth, [66⅔% of daily wages for] 4
 108 weeks for each tooth lost.

109 **[u]** 19. For the total loss of hearing in 1 ear, [66⅔% of daily wages
 110 during] 60 weeks. For the total loss of hearing in both ears by 1 accident,
 111 [66⅔% of daily wages during] 200 weeks.

112 **[v]** 20. The loss of both hands, or both arms, or both feet, or both legs,
 113 or both eyes, or any 2 thereof as the result of any 1 accident, shall con-
 114 stitute total and permanent disability to be compensated according to the
 115 provisions of paragraph "b."

116 **[vv]** 21. Amputation between the elbow and the wrist shall be considered
117 as the equivalent of the loss of a hand and amputation at the elbow shall be
118 considered equivalent to the loss of the arm. Amputation between the knee
119 and ankle shall be considered as the equivalent of the loss of a foot, and
120 amputation at the knee shall be considered equivalent to the loss of the leg.

121 **[w]** 22. In all lesser or other cases involving permanent loss, or where
122 the usefulness of a member or any physical function is permanently impaired,
123 **[the compensation shall be 66⅔% of daily wages, and]** the duration of
124 compensation shall bear such relation to the specific periods of time stated
125 in the above schedule as the disabilities bear to those produced by the injuries
126 named in the schedule. In cases in which the disability is determined as a
127 percentage of total and permanent disability the duration of the compensation
128 shall be a corresponding portion of 550 weeks. Should the employer and
129 employee be unable to agree upon the amount of compensation to be paid in
130 cases not covered by the schedule, either party may appeal to the *Division of*
131 *Workmen's Compensation* **[bureau]** for a settlement of the controversy.

132 **[x]** 23. Where there is a traumatic hernia compensation will be allowed
133 if notice thereof is given by the claimant to the employer within 48 hours after
134 the occurrence of the hernia but any Sunday, Saturday or holiday shall be
135 excluded from this 48-hour period.

136 **[y.** The weekly compensation payments specified in this section are all
137 subject to the same limitation as to maximum and minimum as are stated in
138 paragraph "a" hereof.]

139 **[The provisions of this subsection shall be expressly subject to the provi-**
140 *sions of Revised Statutes 34:15-37.]*

141 *d. If previous loss of function to the body, head, a member or an organ,*
142 *due to any previous compensable accident or accidents, is established by*
143 *competent evidence, and subsequently an injury arising out of and in the*
144 *course of an employment occurs to that part of the body, head, member or*
145 *organ, where there was a previous loss, then and in such case, the employer*
146 *or his insurance carrier at the time of the subsequent injury shall not be*

147 liable for any loss for which compensation has previously been paid or
 148 awarded. In either event, credit shall be given the employer or his insurance
 149 carrier to the extent of the previous loss for which compensation has been paid.

150 [z] c. In case of the death of the person from any cause other than the
 151 accident or occupational disease, during the period of payments for permanent
 152 injury, the remaining payments shall be paid to such of his or her dependents
 153 as are included in the provisions of said section 34:15-13 or, if no dependents,
 154 the remaining amount due, but not exceeding [\$250.00] \$400.00, shall be paid
 155 in a lump sum to the proper person for funeral expenses; but no compensa-
 156 tion shall be due any other person than the injured employee on account of
 157 compensation being paid in excess of 450 weeks on account of disability total
 158 in character and permanent in quality as provided by paragraph "b" of this
 159 section.

1 3. Section 34:15-13 of the Revised Statutes is amended to read as
 2 follows:

3 34:15-13. [In] Except as hereinafter provided, in case of death, com-
 4 pensation shall be computed, but not distributed, on the following basis:

5 a. For 1 dependent, 35% of wages.

6 b. For 2 dependents, 40% of wages.

7 c. For 3 dependents, 45% of wages.

8 d. For 4 dependents, 50% of wages.

9 e. For 5 dependents, 55% of wages.

10 f. For 6 or more dependents, 60% of wages.

11 g. The term "dependents" shall apply to and include any or all of the
 12 following who are dependent upon the deceased at the time of accident or
 13 the occurrence of occupational disease, or at the time of death, namely: Hus-
 14 band, wife, parents, stepparents, grandparents, children, stepchildren, grand-
 15 children, child in esse, posthumous child, illegitimate children,
 16 brothers, sisters, half brothers, half sisters, niece, nephew. Legally
 17 adopted children shall, in every particular, be considered as natural
 17A children. Dependency shall be conclusively presumed as to the de-

18 cedent's widow and natural children under 18 years of age who were
19 actually a part of the decedent's household at the time of his death. Every
20 provision of this article applying to one class shall be equally applicable to
21 the other. Should any dependent of a deceased employee die during the
22 period covered by such weekly payments [or should the widow of a de-
23 ceased employee remarry during such period,] the right of such dependent
24 [or of such widow] to compensation under this section shall cease *but should*
25 *the widow of a deceased employee remarry during such period and before*
26 *the total compensation is paid, she shall be entitled to receive the remain-*
27 *der of the compensation which would have been due her had she not remar-*
28 *ried, or \$1,000.00, whichever is the lesser.* The foregoing schedule applies
29 only to persons wholly dependent, and in the case of persons only partially
30 dependent, except in the case of the widow and children who were actually
31 a part of the decedent's household at the time of his death, the compensa-
32 tion shall be such proportion of the scheduled percentage as the amounts
33 actually contributed to them by the deceased for their support constituted
34 of his total wages and the provision as to a \$10.00 minimum shall not apply
35 to such compensation. In determining the number of dependents, where the
36 deceased employee was a minor, the number of persons dependent upon the
37 deceased employee shall be determined in the same way as if the deceased
38 employee were an adult, notwithstanding any rule of law as to the person
39 entitled to a minor's wages.

40 h. Compensation shall be computed upon the foregoing basis. Distribu-
41 tion shall be made among dependents, if more than 1, according to the
42 order of the Division of Workmen's Compensation, which shall, when ap-
43 plied to for that purpose determine, upon the facts being presented to it,
44 the proportion to be paid to or on behalf of each dependent according to
45 the relative dependency. Payment on behalf of infants shall be made to the
46 surviving parent, if any, or to the statutory or testamentary guardian.

47 i. If death results from the accident or occupational disease, whether
48 there be dependents or not, expenses of the last sickness of the deceased

49 employee shall be paid in accordance with the provisions for medical and
50 hospital service as set forth in section 34:15-15 of this Title. Also the cost
51 of burial, not to exceed ~~[\$250.00]~~ \$400.00, shall be paid to the dependent
52 or other person having paid said costs of burial. In the event that the said
53 dependent or other person has paid less than ~~[\$250.00]~~ \$400.00 the said de-
54 pendent or other person shall be reimbursed in the amount paid and, if the
55 costs of burial exceed the amount so paid, the difference between the said
56 amount and ~~[\$250.00]~~ \$400.00 or so much thereof as may be necessary to
57 pay the costs of burial, shall be paid to the undertaker or embalmer. In the
58 event that no part of the costs of burial has been paid, the amount of such
59 cost of burial, not to exceed ~~[\$250.00]~~ \$400.00, shall be paid to the under-
60 taker or embalmer.

61 j. In computing compensation to those named in this section, except hus-
62 band, wife, parents and stepparents, only those under 18 or over 40 years
63 of age shall be included and then only for that period in which they are
64 under 18 or over 40; provided, however, that payments to such physically
65 or mentally deficient persons as are for such reason dependent shall be made
66 during the full compensation period of ~~[300]~~ 350 weeks.

67 k. The maximum compensation in case of death shall be ~~[\$30.00]~~
68 ~~[\$35.00]~~ \$40.00 per week and the minimum \$10.00 per week, except in the
69 case of partial dependency as provided in this section. This compensation
70 shall be paid during ~~[300]~~ 350 weeks and if at the expiration of ~~[300]~~ 350
71 weeks there shall be 1 or more dependents under 18 years of age compensa-
72 tion shall be continued for such dependents until they reach 18 years of age
73 at the schedule provided under paragraphs "a" to "f" of this section.

1 4. Section 34:15-16 of the Revised Statutes is amended to read as
2 follows:

3 34:15-16. Compensation for all classes of injuries shall run consecutively,
4 and not concurrently, except as provided *in this section and* in section
5 34:15-15 of this Title, as follows: First, medical and hospital services and
6 medicines as provided in said section 34:15-15. After the waiting period,

7 compensation during temporary disability. If total period of disability ex-
 8 tends beyond 4 weeks, compensation to cover waiting period. Following both,
 9 either or none of the above, compensation consecutively for each permanent
 10 injury, *except that permanent disability, total or partial, shall not be*
 11 *determined or awarded until after 26 weeks from the date of the employee's*
 12 *final active medical treatment, or until after 26 weeks from the date of the*
 13 *employee's return to work, whichever is earlier, or, if no time is lost or no*
 14 *treatment is rendered, then permanent disability, total or partial, shall not*
 14A *be determined or awarded until after 26 weeks from the date of the accident,*
 14B *except in cases of amputation or enucleation or death from other cause within*
 14C *that time and except when earlier determination of permanent disability is*
 14D *waived by the employer or his insurance carrier. Nothing herein contained*
 15 *shall prevent an employer or his insurance carrier from paying permanent*
 16 *disability compensation voluntarily prior to the expiration of the 26 week*
 17 *period.* Following any or all or none of the above, if death results from
 18 the accident, expenses of last sickness and burial. Following which com-
 19 pensation to dependents, if any.

20 Where an employer or his insurance carrier desires to pay for or furnish
 21 medical, surgical, or hospital treatment, drugs, orthopedic or prosthetic ap-
 22 pliances, after the date when payments under sections 34:15-12 and 34:15-13
 23 of this Title have terminated, the employer or his insurance carrier may, in
 24 writing, reserve the defense of the jurisdictional limitations provided by sec-
 25 tions 34:15-27, 34:15-34, 34:15-41 and 34:15-51 of this Title; provided, that
 26 the reservation is approved by a deputy [commissioner] *director* after ad-
 27 vising the petitioner personally of his rights and of the effect of such reser-
 28 vation.

1 5. Section 34:15-36 of the Revised Statutes is amended to read as fol-
 2 lows:

3 34:15-36. "Willful negligence" within the intent of this chapter shall
 4 consist of (1) deliberate act or deliberate failure to act, or (2) such conduct as
 5 evidences reckless indifference to safety, or (3) intoxication, operating as the
 6 proximate cause of injury.

7 “Employer” is declared to be synonymous with master, and includes
8 natural persons, partnerships, and corporations; “employee” is synonymous
9 with servant, and includes all natural persons who perform service for another
10 for financial consideration, exclusive of casual employments, which shall be
11 defined, if in connection with the employer’s business, as employment the
12 occasion for which arises by chance or is purely accidental; or if not in con-
13 nection with any business of the employer, as employment not regular, pe-
14 riodic or recurring; provided, however, that forest fire wardens and forest fire
15 fighters employed by the State of New Jersey shall, in no event, be deemed
16 casual employees.

17 [A person engaged in the vending, selling or offering for sale or deliver-
18 ing directly to the general public newspapers, magazines or periodicals or
19 acting as sales agent or distributor as an independent contractor of or for any
20 such newspaper, magazine or periodical shall not be considered an employee
21 within the provisions of this chapter.]

1 [6. Section 34:15-40 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-40. Where a third person [or corporation] is liable to the em-
4 ployee [or his dependents] for an injury or death, the existence of a right
5 of compensation from the employer [or insurance carrier] under this stat-
6 ute shall not operate as a bar to the action of the employee [or his depend-
7 ents], nor be regarded as establishing a measure of damage therein. In the
8 event that the employee [or his dependents] shall recover and be paid from
9 the said third person [or corporation] or *his insurance carrier*, any sum in
10 release or in judgment on account of his or its liability to the injured em-
11 ployee, the liability of the employer under this statute thereupon shall be only
12 such as is hereinafter in this section provided.

13 (a) The obligation of the employer [or his insurance carrier] under
14 this statute to make compensation payments shall continue until the pay-
15 ment, if any, by such third person [or corporation] or *his insurance carrier*
16 is made.

17 (b) If the sum recovered by the employee from the third person [or
18 corporation] *or his insurance carrier* is equivalent to or greater than the
19 liability of the employer [or his insurance carrier] under this statute, the
20 employer [or his insurance carrier] shall be released from such liability and
21 shall be entitled to be reimbursed, as hereinafter provided, for the medical
22 expenses incurred and compensation payments theretofore paid to the in-
23 jured employee [or his dependents] less employee's expenses of suit and
24 attorney's fee as hereinafter defined.

25 (c) If the sum recovered by the employee as aforesaid is less than the
26 liability of the employer [or his insurance carrier] under this statute, the
27 employer [or his insurance carrier] shall be liable for the difference, plus
28 the employee's expenses of suit and attorney's fee as hereinafter defined,
29 and shall be entitled to be reimbursed, as hereinafter provided for so much of
30 the medical expenses incurred and compensation payments theretofore paid
31 to the injured employee [or his dependents] as exceeds the amount of such
32 difference plus such employee's expenses of suit and attorney's fee.

33 (d) If at any time prior to the payment by the third person [or corpora-
34 tion] *or his insurance carrier* to the injured employee [or his dependents],
35 the employer [or his insurance carrier] shall serve notice, as hereinafter
36 provided, upon such third person [or corporation] *or his insurance carrier*
37 that compensation has been applied for by the injured employee [or his de-
38 pendents] it shall thereupon become the duty of such third person [or cor-
39 poration] *or his insurance carrier*, before making any payment to the injured
40 employee [or his dependents], to inquire from such employer [or his in-
41 surance carrier] the amount of medical expenses incurred and compensation
42 theretofore paid to the injured employee [or to his dependents]. Where such
43 notice shall have been served, it shall further become the duty of such third
44 person [or corporation] *or his insurance carrier*, before making any payment
45 as aforesaid, to inquire from such injured employee [or his dependents] the
46 amount of the expenses of suit and attorney's fee, or either of them in the
47 action or settlement of the claim against such third person [or corporation]

48 *or his insurance carrier*. Thereafter, out of that part of any amount about
49 to be paid in release or in judgment by such third person [or corporation]
50 *or his insurance carrier* on account of his or its liability to the injured em-
51 ployee, the employer [or his insurance carrier] shall be entitled to receive
52 from such third person [or corporation] *or his insurance carrier* so much
53 thereof as may be due the employer [or insurance carrier] pursuant to sub-
54 paragraph (b) or (c) of this section. Such sum shall be deducted by such
55 third person [or corporation] *or his insurance carrier* from the sum to be
56 paid in release or in judgment to the injured employee [or his dependents]
57 and shall be paid by such third [party or corporation] *person or his insur-*
58 *ance carrier* to the employer [or his insurance carrier]. Service of notice,
59 hereinbefore required to be made by the employer [or his insurance carrier]
60 upon such third person [or corporation] *or his insurance carrier*, shall be by
61 registered mail, return receipt and in [the] cases [of a corporation] *other*
62 *than an individual* shall be mailed to the registered office of such [corpora-
63 tion] *other person or his insurance carrier*.

64 (c) As used in this section, "expenses of suit" shall mean such expenses,
65 but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but
66 not in excess of 33 $\frac{1}{3}$ % of that part of the sum paid in release or in judgment
67 to the injured employee [or his dependents] by such third [party or cor-
68 poration] *person or his insurance carrier* to which the employer [or his in-
69 surance carrier] shall be entitled in reimbursement under the provisions of
70 this section, but on all sums in excess thereof, this percentage shall not be
71 binding.

72 (f) When an injured employee [or his dependents] fails within 1 year
73 of the accident to either effect a settlement with *the third person or his in-*
74 *surance carrier* or institute proceedings for recovery of damages for his in-
75 juries and loss against the third person [or corporation], the employer [or
76 his insurance carrier], 10 days after a written demand on the injured em-
77 ployee [or his dependents], can either effect a settlement with *the third*
78 *person or his insurance carrier* or institute proceedings against the third

79 person [or corporation] for the recovery of damages for the injuries and
80 loss sustained by such injured employee [or his dependents] and any settle-
81 ment made *with the third person or his insurance carrier* or proceedings had
82 and taken by such employer [or his insurance carrier] against such third
83 person [or corporation], and such right of action shall be only for such
84 right of action that the injured employee [or his dependents] would have
85 had against the third person [or corporation], and shall constitute a bar to
86 any further claim or action by the injured employee [or his dependents]
87 against the third person [or corporation]. If a settlement is effected be-
88 tween the employer [or his insurance carrier] and the third person [or cor-
89 poration] *or his insurance carrier*, or a judgment is recovered by the em-
90 ployer [or his insurance carrier] against the third person [or corporation]
91 for the injuries and loss sustained by the employee and if the amount secured
92 or obtained by the employer [or his insurance carrier] is in excess of the em-
93 ployer's obligation to the employee and the expense of suit, such excess shall
94 be paid to the employee [or his dependents]. The legal action contemplated
95 hereinabove shall be a civil action at law in the name of the injured employee
96 or by the employer [or insurance carrier] in the name of the employee to the
97-99 use of the employer [or insurance carrier], or by the proper party for the
100 benefit of the next of kin of the employee. Where an injured employee [or
101 his dependents have] *has* instituted proceedings for recovery of damages
102 for his injuries and loss against a third person [or corporation] and such
103 proceedings are dismissed for lack of prosecution, the employer [or insur-
104 ance carrier] shall, upon application made within 90 days thereafter, be en-
105 titled to have such dismissal set aside, and to continue the prosecution of
106 such proceedings in the name of the injured employee [or dependents] in
107 accordance with the provisions of this section.

108 (g) If such employee [or his dependents] effects a settlement with *the*
109 *third person or his insurance carrier* or institutes proceedings against the
110 third person [or corporation] prior to the service of notice *upon the third*
111 *person or his insurance carrier* of the compensation obligation of the em-

112 ployer [or his insurance carrier] or prior to the institution of any proceed-
113 ings against the third person [or corporation] by the employer [or his in-
114 surance carrier] for the injuries and loss sustained by such employee [or
115 his dependents], such employer [or his insurance carrier] is barred from
116 instituting any action or proceedings against the third person [or corpora-
117 tion] for the injuries and loss sustained by such employee [or his depend-
118 ents].

119 *Any reference in this section to the employer shall for the purposes of*
120 *this section be deemed to include his insurance carrier, if any. Any refer-*
121 *ence in this section to an employee shall for the purposes of this section be*
122 *deemed to include his dependents, if any.]*

1 6. Section 34:15-40 of the Revised Statutes is amended to read as
2 follows:

3 34:15-40. Where a third person [or corporation] is liable to the em-
4 ployee or his dependents for an injury or death, the existence of a right of
5 compensation from the employer or insurance carrier under this statute
6 shall not operate as a bar to the action of the employee or his dependents,
7 nor be regarded as establishing a measure of damage therein. In the event
8 that the employee or his dependents shall recover and be paid from the said
9 third person [or corporation] or his insurance carrier, any sum in release
10 or in judgment on account of his or its liability to the injured employee or
11 his dependents, the liability of the employer under this statute thereupon shall
12 be only such as is hereinafter in this section provided.

13 (a) The obligation of the employer or his insurance carrier under this
14 statute to make compensation payments shall continue until the payment, if
15 any, by such third person [or corporation] or his insurance carrier is made.

16 (b) If the sum recovered by the employee or his dependents from the
17 third person [or corporation] or his insurance carrier is equivalent to or
18 greater than the liability of the employer or his insurance carrier under this
19 statute, the employer or his insurance carrier shall be released from such lia-
20 bility and shall be entitled to be reimbursed, as hereinafter provided, for the

21 *medical expenses incurred and compensation payments theretofore paid to the*
22 *injured employee or his dependents less employee's expenses of suit and*
23 *attorney's fee as hereinafter defined.*

24 (c) *If the sum recovered by the employee or his dependents as aforesaid*
25 *is less than the liability of the employer or his insurance carrier under this*
26 *statute, the employer or his insurance carrier shall be liable for the difference,*
27 *plus the employee's expenses of suit and attorney's fee as hereinafter defined,*
28 *and shall be entitled to be reimbursed, as hereinafter provided for so much*
29 *of the medical expenses incurred and compensation payments theretofore*
30 *paid to the injured employee or his dependents as exceeds the amount of*
31 *such difference plus such employee's expenses of suit and attorney's fee.*

32 (d) *If at any time prior to the payment by the third person [or corpora-*
33 *tion] or his insurance carrier to the injured employee or his dependents, the*
34 *employer or his insurance carrier shall serve notice, as hereinafter provided,*
35 *upon such third person [or corporation] or his insurance carrier that compen-*
36 *sation has been applied for by the injured employee or his dependents it shall*
37 *thereupon become the duty of such third person [or corporation] or his insur-*
38 *ance carrier, before making any payment to the injured employee or his de-*
39 *pendents, to inquire from such employer or his insurance carrier the amount*
40 *of medical expenses incurred and compensation theretofore paid to the injured*
41 *employee or to his dependents. Where such notice shall have been served, it*
42 *shall further become the duty of such third person [or corporation] or his in-*
43 *surance carrier, before making any payment as aforesaid, to inquire from*
44 *such injured employee or his dependents the amount of the expenses of suit*
45 *and attorney's fee, or either of them in the action or settlement of the claim*
46 *against such third person [or corporation] or his insurance carrier. There-*
47 *after, out of that part of any amount about to be paid in release or in judg-*
48 *ment by such third person [or corporation] or his insurance carrier on*
49 *account of his or its liability to the injured employee or his dependents, the*
50 *employer or his insurance carrier shall be entitled to receive from such third*
51 *person [or corporation] or his insurance carrier so much thereof as may be*

52 due the employer or insurance carrier pursuant to subparagraph (b) or (c)
53 of this section. Such sum shall be deducted by such third person [or corpora-
54 tion] or his insurance carrier from the sum to be paid in release or in
55 judgment to the injured employee or his dependents and shall be paid by
56 such third [party or corporation] person or his insurance carrier to the
57 employer or his insurance carrier. Service of notice, hereinbefore required
58 to be made by the employer or his insurance carrier upon such third person
59 [or corporation] or his insurance carrier, shall be by registered mail, return
60 receipt and in [the] cases [of a corporation] other than an individual shall
61 be mailed to the registered office of such [corporation] other third person or
62 his insurance carrier.

63 (e) As used in this section, "expenses of suit" shall mean such expenses,
64 but not in excess of \$200.00, and "attorney's fee" shall mean such fee, but not
65 in excess of 33 1/3% of that part of the sum paid in release or in judgment to
66 the injured employee or his dependents by such third [party or corporation]
67 person or his insurance carrier to which the employer or his insurance carrier
68 shall be entitled in reimbursement under the provisions of this section, but on
69 all sums in excess thereof, this percentage shall not be binding.

70 (f) When an injured employee or his dependents fail within 1 year of the
71 accident to either effect a settlement with the third person or his insurance
72 carrier or institute proceedings for recovery of damages for his injuries and
73 loss against the third person [or corporation], the employer or his insurance
74 carrier, 10 days after a written demand on the injured employee or his de-
75 pendents, can either effect a settlement with the third person or his insurance
76 carrier or institute proceedings against the third person [or corporation] for
77 the recovery of damages for the injuries and loss sustained by such injured
78 employee or his dependents and any settlement made with the third person
79 or his insurance carrier or proceedings had and taken by such employer or
80 his insurance carrier against such third person [or corporation], and such
81 right of action shall be only for such right of action that the injured em-
82 ployee or his dependents would have had against the third person [or corpora-

83 tion], and shall constitute a bar to any further claim or action by the injured
84 employee or his dependents against the third person [or corporation]. If a
85 settlement is effected between the employer or his insurance carrier and the
86 third person [or corporation] or his insurance carrier, or a judgment is
87 recovered by the employer or his insurance carrier against the third person
88 [or corporation] for the injuries and loss sustained by the employee or his
89 dependents and if the amount secured or obtained by the employer or his
90 insurance carrier is in excess of the employer's obligation to the employee or
91 his dependents and the expense of suit, such excess shall be paid to the em-
92 ployee or his dependents. The legal action contemplated hereinabove shall
93 be a civil action at law in the name of the injured employee or by the em-
94 ployer or insurance carrier in the name of the employee to the use of the
95 employer or insurance carrier, or by the proper party for the benefit of the
96 next of kin of the employee. Where an injured employee or his dependents
97 have instituted proceedings for recovery of damages for his injuries and loss
98 against a third person [or corporation] and such proceedings are dismissed
99 for lack of prosecution, the employer or insurance carrier shall, upon applica-
100 tion made within 90 days thereafter, be entitled to have such dismissal set
101 aside, and to continue the prosecution of such proceedings in the name of the
102 injured employee or dependents in accordance with the provisions of this
102A section.

103 (g) If such employee or his dependents effect a settlement with the third
104 person or his insurance carrier or institute proceedings against the third per-
105 son [or corporation] prior to the service of notice upon the third person or
106 his insurance carrier of the compensation obligation of the employer or his
107 insurance carrier or prior to the institution of any proceedings against the
108 third person [or corporation] by the employer or his insurance carrier for
109 the injuries and loss sustained by such employee or his dependents, such em-
110 ployer or his insurance carrier is barred from instituting any action or
111 proceedings against the third person [or corporation] for the injuries and
112 loss sustained by such employee or his dependents.

113 The words "third person" as used in this section include corporations,
114 companies, associations, societies, firms, partnerships and joint stock com-
115 panies as well as individuals.

1 7. Section 34:15-53 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-53. Within [10] 20 days after the filing of an answer, or the ex-
4 piration of the time for filing an answer if no answer is filed, the secretary
5 of the [bureau] *division* shall fix a time and place for hearing the petition,
6 or shall send the petition and answer or a transcript of the petition and
7 answer to the [commissioner] *director*, a deputy [commissioner] *director* or
8 1 of the referees, in which case such [commissioner] *director*, deputy
9 [commissioner] *director* or referee, within [15] 20 days after the filing of
10 the answer, shall fix a time and place for the hearing of the petition. Such
11 time shall be not less than 4 weeks nor more than 6 weeks after the filing of
12 the petition, *provided however, that in cases where the extent of permanent*
13 *disability, total or partial, is an issue, the determination of such issue shall*
14 *be deferred as provided in section 34:15-16 of this Title.* The petition shall
15 be heard either in the county in which the injury occurred or in which the
16 petitioner or [defendant] *respondent* resides, or in which the [defendant's]
17 *respondent's* place of business is located, or in which the [defendant] *re-*
18 *spondent* may be served with process. When a time and place has been
19 fixed for such hearing, the [commissioner] *director*, deputy [commissioner]
20 *director* or the referee to whom the cause has been referred shall give at least
21 10 days' notice to each party of the time and place of hearing. The [com-
22 missioner] *director*, deputy [commissioner] *director* or any referee to whom
23 a cause has been referred, shall have power to adjourn the hearing thereof
24 from time to time in his discretion.

1 8. Section 34:15-66 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-66. Either party may appeal from the judgment of the director,
4 deputy director, or referee, to the County Court of the county in which the
5 accident occurred or, if the accident occurred out of the State, then of the
6 county wherein the hearing was had, by filing with the secretary of the divi-
7 sion, and with the clerk of such county, a notice of appeal. Such notice
8 shall be filed within [30] 45 days after the judgment has been rendered.
9 The judgment entered in the County Court on any such appeal shall be con-
10 clusive and binding, and proceedings thereon shall only be for the recovery
11 of moneys thereby determined to be due. Costs may be awarded by the
12 court in its discretion, and when so awarded the same costs shall be allowed,
13 taxed and collected as are allowed, taxed and collected for like services in
14 the County Court. In case the respondent, in said appeal, is unable to pay
15 counsel, the court shall assign counsel to represent him. Nothing herein
16 contained shall be construed as limiting the jurisdiction of the Superior
17 Court to review any matter through a proceeding in lieu of prerogative writ
18 or as limiting the jurisdiction of the Supreme Court.

1 9. An accident to an employee causing his injury or death, suffered while
2 engaged in his employment but resulting from horseplay or skylarking on the
3 part of a fellow employee, not instigated or taken part in by the employee who
4 suffers the accident, shall be construed to have arisen out of and in the course
5 of the employment of such employee and shall be compensable under the act
6 hereby supplemented accordingly.

1 10. Whenever as the result of an accident for which compensation is pay-
2 able to any employee of any employer under the article to which this act is a
3 supplement, such employee sustains damage to, or destruction of, a prosthetic
4 device, hearing aid, artificial member, dental appliance or [his] eyeglasses,
5 [clothing or personal effects,] it shall be the obligation of the employer to re-
6 pair or replace the same or to make payment of the cost or value thereof, upon
7 claim made therefor, which obligation shall be in addition to the obligation for
8 the payment of the compensation payable to said employee for injuries sus-
9 tained as a result of such accident.

1 [11. Whenever a physician, surgeon or hospital shall, at the instance of
2 an employer or his insurance carrier, render or furnish medical or hospital
3 service to an employee, it shall be the duty of the employer and the insurance
4 carrier, if any, to obtain from the physician, surgeon or hospital a detailed re-
5 port in writing of the medical history of the employee and of the examination
6 and treatment of the employee, including the findings, diagnoses, estimates,
7 prognoses and treatments advised and given, if any, and to furnish the em-
8 ployee with such report or reports or a true copy of the same, within 10 days
9 after the rendering or furnishing of any such medical or hospital service.]

1 [12. The Division of Workmen's Compensation shall enforce the pro-
2 visions of section 11 of this act and the director or any deputy director of the
3 division shall, upon application made for the purpose, order compliance in
4 any particular case or instance.]

1 [13. Any employer or insurance carrier failing to comply with the pro-
2 visions of section 11 of this act shall be precluded from offering any defense or
3 opposition to the employee's claim for compensation, unless it is shown to
4 the satisfaction of the said director or deputy director that the employer or
5 insurance carrier is without fault and shall comply with the provisions of
6 this act.]

1 [14. Any employer or insurance carrier shall also be subject to a penalty
2 for each noncompliance of the provisions of section 11 of this act, of not less
3 than \$100.00 or more than \$500.00, to be fixed by the Commissioner of Labor
4 and Industry, which shall be recoverable by a suit at law by the said com-
5 missioner in the name of the State of New Jersey.]

1 [15.] 11. This act shall take effect January 1, 1957.

STATE OF NEW JERSEY

INTRODUCED MARCH 16, 1931

By Mr. REEVES

Referred to Committee on Judiciary

AN ACT to amend an act entitled "An act prescribing the liability of an employer to make compensation for injuries received by an employee in the course of employment, establishing an elective schedule of compensation, and regulating procedure for the determination of liability and compensation thereunder," approved April fourth, one thousand nine hundred and eleven.

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

1 1. Paragraph eleven (x) of the act referred to in the title of this act is hereby
2 amended to read as follows:

3 (x) Inguinal Hernia is a disease which ordinarily develops gradually, being
4 very rarely the result of an accident. Where there is real traumatic hernia resulting
5 from the application of force directly to the abdominal wall, either puncturing or
6 tearing the wall, compensation will be allowed. All other cases will be considered
7 as either congenital or slow development and not compensable, being a disease rather
8 than an accidental injury; unless conclusive proof is offered that the hernia was
9 immediately caused by such sudden effort or severe strain that, first the descent of
10 the hernia immediately followed the cause; second, that there was severe pain in
11 the hernial region; third, that there was such prostration that the employee was
12 compelled to cease work immediately; fourth, that the above facts were of such
13 severity that the same was noticed by the claimant and communicated to the employer
14 within twenty-four hours after the occurrence of the hernia, and days when the
15 business is not in operation, such as Sundays, Saturdays or holidays, shall be
16 excluded from this twenty-four hour period; fifth, that there was such physical

17 distress that the attendance of a licensed physician was required within twenty-
18 four hours after the occurrence of the hernia. In the case of hernia as above defined,
19 the provisions of paragraph thirteen, fourteen and eleven (a) shall apply, until
20 such time as the employee is able to resume some kind of work with the aid of a
21 truss or other mechanical appliance. If the employee refuses to permit of an opera-
22 tion, the employer shall meet the requirements above specified, pay the reasonable
23 costs of the truss or other appliance found necessary, and also pay compensation
24 for twenty weeks, following which the obligation shall cease and terminate, unless
25 death results from the hernia, in which case the provisions of paragraph twelve shall
26 apply. However, if the employee shall elect to undergo an operation, by a physician
27 selected by the employer, the employer shall meet all the expenses incident to such
28 operation and recovery, not in excess of one hundred and fifty dollars, together
29 with compensation as provided in paragraph eleven (a) during the period of dis-
30 ability prior to and following the operation, subject to the provisions of paragraph
31 thirteen. If the employee refuses the services of the physician selected by the
32 employer, preferring one of his own selection, the employer shall be relieved of
33 obligations concerning medical expense due to the operation and recovery, but shall
34 pay compensation during the prior and resulting periods of disability. If death
35 results from the hernia or operation, the provisions of paragraph twelve shall apply.

1 2. Paragraph twenty-one (f) is hereby amended to read as follows:

2 (f) An agreement [or award of] for compensation may be modified at any
3 time by a subsequent agreement, or a formal award reviewed within two years
4 from the date when the injured person last received a payment, upon the application
5 of either party on the ground that the incapacity of the injured employee has
6 subsequently increased, or reviewed at any time on the ground that the disability has
7 diminished. In such case the provisions of paragraph seventeen with reference to
8 medical examination shall apply.

1 3. Paragraph twenty-three (f) is hereby amended to read as follows:

2 (f) Where a third person or corporation is liable to the employee or his
3 dependents for an injury or death, the existence of a right of compensation
4 from the employer under this statute shall not operate as a bar to the action of
5 the employee or his dependents, nor be regarded as establishing a measure of
6 damage therein. However, in event that the employee or his dependents shall

7 recover from the said third person or corporation, a sum equivalent to or greater
 8 than the total compensation payments for which the employer is liable under this
 9 statute, the employer shall be released thereby from the obligation of compensation.
 10 If, however, the sum so recovered from the third person or corporation is less
 11 than the total of compensation payments, the employer shall be liable only for the
 12 difference. The obligation of the employer under this statute to make compensa-
 13 tion shall continue until the payment, if any, by such third person or corporation
 14 is made. Such employer shall file with the third person or corporation so liable,
 15 at any time prior to payment, a statement of the compensation agreement or
 16 award between himself and his employee, or the dependents of the employee, and
 17 the employer shall thereafter be entitled to receive from such third person or cor-
 18 poration, upon the payment of any amount in release or in judgment by the third
 19 person or corporation on account of his or its liability to the injured employee or
 20 his dependents, a sum equivalent to the medical expenses incurred and the amount
 21 of compensation payments which the employer has heretofore paid to the injured
 22 employee or his dependents, which payments shall be deducted by the third persons
 23 or corporation from the sum paid in release or judgment to the injured employee
 24 or his dependents.

25 When an injured employee or his dependent fails within six months of the
 26 accident, to take legal action against a third party responsible for the injury, or
 27 accepts a settlement for less than the compensation obligation of the employer, the
 28 employer or his insurance carrier is hereby authorized to proceed legally against
 29 such third party; provided, however, if the amount secured by the employer or
 30 carrier is in excess of the employer's obligation and the expense of suit, the balance
 31 shall be paid to the employee or the dependent.

1 4. Paragraph twenty-three (g) is hereby amended to read as follows:

2 (g) Whenever in section two of this act the term "wages" is used it shall
 3 be construed to mean the money rate at which the service rendered is recom-
 4 pensed under the contract of hiring in force at the time of the accident, and
 5 shall not include gratuities received from the employer or others. Board and
 6 lodging when furnished by the employer as part of the wages shall be included
 7 and valued at five dollars per week, unless the money value of such advantages

8 shall have been otherwise fixed by the parties at the time of hiring. Where prior
 9 to the accident, the rate of wages is fixed by the output of the employee, the
 10 daily wage shall be calculated by dividing the number of days the workman was
 11 actually employed into the total amount the employee earned during the preced-
 12 ing six months, or so much thereof as shall refer to employment by the same
 13 employer. Where the rate of wages is fixed by the hour, the daily wage shall be
 14 found by multiplying the hourly rate by the customary number of working hours
 15 constituting an ordinary day in the character of the work involved. In any case
 16 the weekly wage shall be found by multiplying the daily wage by five [and one-
 17 half] or if the employee worked a greater proportion of the week regularly, then
 18 by five and one-half, six, six and one-half or seven, according to the customary
 19 number of working days constituting an ordinary week in the character of work
 20 involved. Five days shall constitute a minimum week.

1 5. Paragraph twenty-three (h) is hereby amended to read as follows:

2 (h) In case of personal injury or death all claims for compensation on
 3 account thereof shall be forever barred unless a petition is filed in duplicate with
 4 the secretary of the Workmen's Compensation Bureau, at the State House, in
 5 Trenton, as prescribed in paragraph five of the supplement to this act, approved
 6 February twenty-eight, one thousand nine hundred and eighteen, as Chapter one
 7 hundred and forty-nine, as later amended. [within one year after the date on which
 8 the accident occurred, or in case an agreement of compensation has been made
 9 between such employer and such claimant, then within one year after the failure
 10 of the employer to make payment pursuant to the terms of such agreement; or
 11 in case a part of the compensation has been paid by such employer, then within
 12 one year after the last payment of compensation.]

1 6. This act shall take effect immediately.

STATEMENT

The purpose of these amendments is as follows:

To protect an employee with respect to giving notice of a hernia when the plant
 may be shut down.

To clarify and make certain when a claim may be reopened.

To define more certainly the minimum compensation week.