

November 26, 1973

LEGISLATIVE HISTORY OF R.S.34:15-10

FROM: Herta Prager, Legislative Research Librarian, January 23, 1958

SUBJECT: Legislative History of N.J.R.S. 34:15-10 and 34:15-40

NOTE: This Legislative History was revised November 26, 1973

I. R.S.34:15-10

This section was first enacted as Laws of 1911 chapter 95 par.9 Senate 27 (See Legislative History of R.S.34:15-37)

This bill did not have a statement. It was amended once and the underlined phrases in the enclosed copy were added.

Section 9 was amended as follows:

Laws of 1924 chapter 159 par.1 Senate 8

The original bill with statement and Senate amendments are enclosed. Senate 8 passed Assembly without amendment 3/7/24.

Laws of 1940, chapter 176, par.1 Assembly 405.

A new paragraph was added as per enclosed copy and statement.

Laws of 1945, chapter 74, par.4 Senate 87.

Copies of original bill and Senate amendment enclosed. Statement is also enclosed. Senate 87 passed in Assembly without amendment 3/26/45.

Laws of 1956, chapter 141 Assembly 585.

Practically no change in the section. Copies of bills and statement enclosed.

II R.S. 34:15-40

This section was enacted as Laws of 1911, chapter 95, par.23 Senate 27.

R. S. 34: 15-10

24:15-10

Laws 1940 Chapter 176 Assembly 405 Mr. Myers

New Wording:

Nothing in this section regarding the payment of a compensation or death benefit in double the amount payable under the schedules provided in sections 34:15-12 and 34:15-13 of this Title, shall apply to employees, of the age of sixteen years or under, employed in summer camps operated by the Boy Scouts of America, the Girl Scouts of America, the Knights of Columbus, the Y. M. C. I., the Y. W. C. A., the Y. M. H. A., or any domestic corporation organized solely for religious or charitable purposes.

STATEMENT

The purpose of this act is to remove the burden on the employer of double indemnity in the employment of a minor in summer camps operated by the Boy Scouts of America, the Girl Scouts of America and like institutions.

SENATE, No. 87

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1945

By Mr. VAN ALSTYNE

Referred to Committee on Judiciary

AN ACT relating to workmen's compensation, and amending sections 34:1-57, 34:15-10, 34:15-12, 34:15-13, 34:15-14, 34:15-16, 34:15-37, 34:15-38, 34:15-64 and 34:15-66, and supplementing chapter fifteen 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. This act shall be known as the workmen's compensation amendments
2 of one thousand nine hundred and forty-five.

1 2. Section 34:1-57 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:1-57. The workmen's compensation bureau shall consist of the commis-
4 sioner who shall act as chairman, a director, [three] deputy commissioners
5 of compensation appointed by the commissioner [one of whom he shall des-
6 ignate as secretary of the bureau]; and such referees and other employees
7 as may, in the judgment of the commissioner, be necessary. Appointments
8 under this section shall be made in accordance with the provisions of Title
9 11, Civil Service.

10 The director of the bureau shall be designated by the commissioner
11 from among the deputy commissioners of compensation with approval of the
12 Governor. Such deputy commissioner shall also serve as secretary of the bu-

13 rean, and may continue to perform the duties of a deputy commissioner. He
 14 shall receive compensation of nine thousand dollars (\$9,000.00) per annum,
 15 and upon his designation he shall retain all of his prior civil service status
 16 as a deputy commissioner under the provisions of Title 11, Civil Service.

17 The director, subject to supervision and direction of the commissioner,
 18 shall:

- 19 (a) be the administrative head of the bureau;
 20 (b) prescribe the organization of the bureau, and the duties of his
 21 subordinates and assistants, except as may otherwise be provided by law;
 22 (c) direct and supervise the activities of all members of the bureau;
 23 (d) make an annual report to the commissioner of the work of the
 24 bureau, which report shall be published annually for general distribution
 25 at such reasonable charge, not exceeding cost, as the commissioner shall
 26 determine.

1 3. The first director of the workmen's compensation bureau to be desig-
 2 nated under this act shall be the deputy commissioner of compensation serv-
 3 ing upon the effective date hereof in the capacity of secretary of the bureau.

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

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] injury is a
 6 minor under fourteen years of age employed in violation of the labor law or
 7 a minor between fourteen and [sixteen] eighteen years of age employed, per-
 8 mitted or suffered to work without an [age and schooling certificate or age
 9 and working] employment certificate or special permit as required by law or
 10 at an occupation prohibited at [that] the minor's age by [the labor] law, a
 11 compensation or death benefit shall be payable to the employee or his de-
 12 pendants which shall be double the amount payable under [the schedules pro-
 13 vided in sections 34:15-12 and 34:15-13 of this Title] this article.

14 The possession of [a] such duly issued [age and schooling certificate or
15 age and working] employment certificate [or certificate of date of birth]
16 shall be conclusive evidence for an employer that the minor has reached the
17 age certified to therein and no extra compensation shall be payable to any
18 minor engaged in an employment allowed by the law for the age and sex
19 certified to in such certificate. If the certificate presented by the employee
20 as one issued to him shall have been really issued to another child and the
21 real age of the employee shall be such that his employment in any capacity
22 or in the particular capacity he was employed by the employer was prohib-
23 ited and if the employer shall show to the satisfaction of the workmen's
24 compensation bureau that he accepted the certificate in good faith as having
25 been issued to the employee and could not have, despite reasonable dili-
26 gence, discovered the fraud, in such event no extra compensation shall be
27 paid to the employee illegally employed.

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

34 Nothing in this chapter contained shall deprive an infant under the age
35 of sixteen of the right or rights now existing to recover damages in a com-
36 mon law or other appropriate action or proceeding for injuries received by
37 reason of the negligence of his or her master.

38 Nothing in this section regarding the payment of a compensation or
39 death benefit in double the amount payable under the schedules provided in
40 sections 34:15-12 and 34:15-13 of this Title shall apply to employees, of the
41 age of sixteen years or under, employed in summer camps operated by the
42 Boy Scouts of America, the Girl Scouts of America, the Knights of Colum-
43 bus, the Y. M. C. A., the Y. W. C. A., the Y. M. H. A., or any domestic corpo-
44 ration organized solely for religious or charitable purposes.

1 5. Whenever an employer of labor receives a written notice from the
2 Commissioner of Labor of this State or from his duly authorized deputy,
3 notifying the employer to install proper safety devices or guards for the
4 protection of employees, or to discontinue industrial practices dangerous to
5 the employees, and the employer fails to comply with the requirements of
6 the said notice, and an employee receives a compensable injury as a result
7 of the failure of the employer to comply with the requirements of the said
8 notice, the amount payable by the employer to the injured employee shall
9 be twice the amount otherwise payable under this article.

10 The employer alone and not the insurance carrier shall be liable for
11 this extra compensation or death benefit, and any provision in an insurance
12 policy undertaking to relieve an employer from the liability for the extra
13 compensation or extra death benefit shall be void.

1 6. 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, sixty-six and two-thirds
5 per cent of the wages received at the time of the injury, subject to a max-
6 imum compensation of [twenty] twenty-five dollars per week and a mini-
7 mum of ten dollars per week [; if at the time of the injury the employee
8 receives wages of less than ten dollars per week, then he shall receive the
9 full amount of such wages per week]. This compensation shall be paid dur-
10 ing the period of such disability, not, however, beyond three hundred weeks.

11 b. For disability total in character and permanent in quality, sixty-six
12 and two-thirds per cent of the wages received at the time of injury, sub-
13 ject to a maximum compensation of [twenty] twenty-five dollars per week
14 and a minimum of ten dollars per week [; if at the time of injury the em-
15 ployee receives wages of less than ten dollars per week then he shall receive
16 the full amount of wages per week]. This compensation shall be paid for
17 a period of four hundred and fifty weeks, at which time compensation pay-
18 ments shall cease unless the employee shall have submitted to such physi-

19 cal or educational rehabilitation as may have been ordered by the rehabili-
 20 tation commission, and can show that because of such disability it is im-
 21 possible for him to obtain wages or earnings equal to those earned at the
 22 time of the accident, in which case further weekly payments shall be made
 23 during the period of such disability, the amount thereof to be the previous
 24 weekly compensation payment diminished by that portion thereof that the
 25 wage, or earnings, he is then able to earn, bears to the wages received at
 26 the time of the accident. If his wages or earnings equal or exceed wages
 27 received at the time of the accident, then his compensation rate shall be
 28 reduced to five dollars. In calculating compensation for this extension
 29 beyond four hundred and fifty weeks the minimum provision of ten dol-
 30 lars shall not apply. This extension of compensation payments beyond four
 31 hundred and fifty weeks shall be subject to such periodic reconsiderations
 32 and extensions as the case may require, and shall apply only to disability total
 33 in character and permanent in quality, and shall not apply to any acci-
 34 dent occurring prior to July fourth, nineteen hundred and twenty-three.

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

39 d. For the loss of the thumb, sixty-six and two-thirds per cent of daily
 40 wages during ~~【sixty-five】~~ seventy-five weeks.

41 e. For the loss of the first finger, commonly called index finger, sixty-
 42 six and two-thirds per cent of daily wages during ~~【forty】~~ fifty weeks.

43 f. For the loss of a second finger, sixty-six and two-thirds per cent of
 44 daily wages during ~~【thirty】~~ forty weeks.

45 g. For the loss of a third finger, sixty-six and two-thirds per cent of
 46 daily wages during ~~【twenty】~~ thirty weeks.

47 h. For the loss of a fourth finger, commonly called little finger, sixty-
 48 six and two-thirds per cent of daily wages during ~~【fifteen】~~ twenty weeks.

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

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

59 k. For the loss of a great toe, sixty-six and two-thirds per cent of daily
60 wages during [~~thirty~~] forty weeks.

61 l. For the loss of one of the toes other than a great toe, sixty-six and
62 two-thirds per cent of daily wages during [~~ten~~] fifteen weeks.

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

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

68 o. For the loss of a hand, or of the thumb and two fingers (on one
69 hand), or of four fingers (on one hand), sixty-six and two-thirds per cent
70 of the daily wages during [~~one hundred and seventy-five~~] two hundred and
71 thirty weeks.

72 p. For the loss of an arm, sixty-six and two-thirds per cent of daily
73 wages during [~~two hundred thirty~~] three hundred weeks.

74 q. For the loss of a foot, sixty-six and two-thirds per cent of daily
75 wages during [~~one hundred twenty-five~~] two hundred weeks.

76 r. For the loss of a leg, sixty-six and two-thirds per cent of daily
77 wages during [~~one hundred and seventy-five~~] two hundred and seventy-five
78 weeks.

79 s. For the loss of an eye, sixty-six and two-thirds per cent of daily
80 wages during ~~[one hundred]~~ one hundred and fifty weeks.

81 t. For the loss of a natural tooth, sixty-six and two-thirds per cent
82 of daily wages for four weeks for each tooth lost.

83 u. For the total loss of hearing in one ear, sixty-six and two-thirds
84 per cent of daily wages during ~~[forty]~~ sixty weeks. For the total loss of
85 hearing in both ears by one accident, sixty-six and two-thirds per cent of
86 daily wages during ~~[one hundred sixty]~~ two hundred weeks.

87 v. The loss of both hands, or both arms, or both feet, or both legs, or
88 both eyes, or any two thereof as the result of any one accident, shall con-
89 stitute total and permanent disability to be compensated according to the
90 provisions of paragraph "h."

91 vv. Amputation between the elbow and the wrist shall be considered as
92 the equivalent of the loss of a hand and amputation at the elbow shall be
93 considered equivalent to the loss of the arm. Amputation between the knee
94 and ankle shall be considered as the equivalent of the loss of a foot, and
95 amputation at the knee shall be considered equivalent to the loss of the leg.

96 w. In all lesser or other cases involving permanent loss, or where the
97 usefulness of a member or any physical function is permanently impaired,
98 the compensation shall be sixty-six and two-thirds per cent of daily wages,
99 and the duration of compensation shall bear such relation to the specific
100 periods of time stated in the above schedule as the disabilities bear to
101 those produced by the injuries named in the schedule. In cases in which
102 the disability is determined as a percentage of total and permanent disa-
103 bility the duration of the compensation shall be a corresponding portion of
104 five hundred and fifty weeks. Should the employer and employee be unable
105 to agree upon the amount of compensation to be paid in cases not covered
106 by the schedule, either party may appeal to the workmen's compensation
107 bureau for a settlement of the controversy.

108 x. Inguinal hernia is a disease which ordinarily develops gradually,
109 being very rarely the result of an accident. Where there is a real trau-

110 matic hernia resulting from the application of force directly to the abdom-
111 inal wall, either puncturing or tearing the wall, compensation will be al-
112 lowed. All other cases will be considered as either congenital or of slow
113 development and not compensable, being a disease rather than an accidental
114 injury; unless [conclusive] preponderant proof is offered that the hernia
115 was immediately caused by such sudden effort or severe strain that, first,
116 the descent of the hernia immediately followed the cause; second, that there
117 was severe pain in the hernial region; third, that there was such prostra-
118 tion that the employee was compelled to cease work immediately; fourth,
119 that the above facts were of such severity that the same was noticed by the
120 claimant and communicated to the employer within twenty-four hours after
121 the occurrence of the hernia (days when the business is not in operation,
122 such as Sundays, Saturdays or holidays shall be excluded from this twenty-
123 four-hour period); fifth, that there was such physical distress that the at-
124 tendance of a licensed physician was required within twenty-four hours after
125 the occurrence of the hernia. In the case of hernia as above defined, the
126 provisions of paragraph "a" of this section and sections 34:15-14 and
127 34:15-15 of this Title shall apply, until such time as the employee is able
128 to resume some kind of work with the aid of a truss or other mechanical
129 appliance. If the employee refuses to permit of an operation the employer
130 shall meet the requirements above specified, pay the reasonable costs of the
131 truss or other appliance found necessary, and also pay compensation for
132 twenty weeks, following which the obligation shall cease and terminate, unless
133 death results from the hernia, in which case the provisions of section 34:15-13
134 of this Title shall apply. However, if the employee shall elect to undergo
135 an operation, by a physician selected by the employer, the employer shall
136 meet all the expense incident to such operation and recovery, not in excess
137 of one hundred and fifty dollars, together with compensation as provided
138 in paragraph "a" of this section during the periods of disability prior to
139 and following the operation, subject to the provisions of said section 34:15-14.
140 If the employee refuses the services of the physician selected by the em-

141 ployer, preferring one of his own selection, the employer shall be relieved
 142 of obligations concerning medical expense due to the operation and recov-
 143 ery, but shall pay compensation during the prior and resulting periods of
 144 disability. If death results from the hernia or operation, the provisions of
 145 said section 34:15-13 shall apply.

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

149 z. In case of the death of the person from any cause other than the acci-
 150 dent or occupational disease, during the period of payments for permanent
 151 injury, the remaining payments shall be paid to such of his or her depend-
 152 ents as are included in the provisions of said section 34:15-13 or, if no de-
 153 pendants, the remaining amount due, but not exceeding [one] two hundred
 154 and fifty dollars, shall be paid in a lump sum to the proper person for
 155 funeral expenses; but no compensation shall be due any other person than
 156 the injured employee on account of compensation being paid in excess of
 157 four hundred and fifty weeks on account of disability total in character and
 158 permanent in quality as provided by paragraph "b" of this section.

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

2 34:15-13. In case of death, compensation shall be compensated, but not dis-
 3 tributed, on the following basis:

4 a. For one dependent, thirty-five per cent of wages.

5 b. For two dependents, forty per cent of wages.

6 c. For three dependents, forty-five per cent of wages.

7 d. For four dependents, fifty per cent of wages.

7½ e. For five dependents, fifty-five per cent of wages.

8 f. For six or more dependents, sixty per cent of wages.

9 g. The term "dependents" shall apply to and include any or all of the
 10 following who are dependent upon the deceased at the time of accident or the
 11 occurrence of occupational disease, or at the time of death, namely: Husband,
 12 wife, parents, step-parents, grandparents, children, stepchildren, grandchild-

13 dren, child in esse, posthumous child, illegitimate children, brothers, sisters,
14 half-brothers, half-sisters, niece, nephew. Legally adopted children shall, in
15 every particular, be considered as natural children. Dependency shall be con-
16 clusively presumed as to the decedent's widow and natural children under
17 [sixteen] eighteen years of age who were actually a part of the decedent's
18 household at the time of his death. Every provision of this article applying to
19 one class shall be equally applicable to the other. Should any dependent of a
20 deceased employee die during the period covered by such weekly payments or
21 should the widow of a deceased employee remarry during such period, the
22 right of such dependent or of such widow to compensation under this section
23 shall cease. The foregoing schedule applies only to persons wholly depen-
24 dent, and in the case of persons only partially dependent, except in the case
25 of the widow and children who were actually a part of the decedent's house-
26 hold at the time of his death, the compensation shall be such proportion of the
27 scheduled percentage as the amounts actually contributed to them by the de-
28 ceased for their support constituted of his total wages and the provision as to
29 a ten-dollar minimum shall not apply to such compensation. In determining
30 the number of dependents, where the deceased employee was a minor, the
31 number of persons dependent upon the deceased employee shall be deter-
32 mined in the same way as if the deceased employee were an adult, notwith-
33 standing any rule of law as to the person entitled to a minor's wages.

34 h. Compensation shall be computed upon the foregoing basis. Distribu-
35 tion shall be made among dependents, if more than one, according to the
36 order of the workmen's compensation bureau, which shall, when applied to
37 for that purpose determine, upon the facts being presented to it, the propor-
38 tion to be paid to or on behalf of each dependent according to the relative
39 dependency. Payment on behalf of infants shall be made to the surviving
40 parent, if any, or to the statutory or testamentary guardian.

41 i. If death results from the accident or occupational disease, whether
42 there be dependents or not, expenses of the last sickness of the deceased em-
43 ployee shall be paid in accordance with the provisions for medical and hospi-

44 tal service as set forth in section 34:15-15 of this Title. Also the cost of
 45 burial, not to exceed [one] two hundred and fifty dollars ~~[\$150.00]~~ ~~(\$250.00)~~,
 46 shall be paid to the dependent or other person having paid said costs of burial.
 47 In the event that the said dependent or other person has paid less than
 48 [one] two hundred and fifty dollars ~~[\$150.00]~~ ~~(\$250.00)~~ the said dependent
 49 or other person shall be reimbursed in the amount paid and, if the costs of
 50 burial exceed the amount so paid, the difference between the said amount and
 51 [one] two hundred and fifty dollars ~~[\$150.00]~~ ~~(\$250.00)~~ or so much thereof
 52 as may be necessary to pay the costs of burial, shall be paid to the under-
 53 taker or embalmer. In the event that no part of the costs of burial has been
 54 paid, the amount of such cost of burial, not to exceed [one] two hundred
 55 and fifty dollars ~~[\$150.00]~~ ~~(\$250.00)~~, shall be paid to the undertaker or em-
 56 balmer.

57 j. Payments to such physically or mentally deficient persons as are for
 58 such reason dependent shall continue during the full compensation period of
 59 three hundred weeks. In computing compensation to those named in this
 60 paragraph, except husband, wife, parents and step-parents, only those under
 61 [sixteen] eighteen or over forty years of age shall be included and then only
 62 for that period in which they are under [sixteen] eighteen or over forty.

63 k. The maximum compensation in case of death shall be twenty-five dol-
 64 lars per week and the minimum ten dollars per week, except in the case of
 65 partial dependency as provided in this section. [If at the time of injury the
 66 employee receives wages of less than ten dollars per week, compensation
 67 shall be for the full amount of such wages per week.] This compensation
 68 shall be paid during three hundred weeks and if at the expiration of three
 69 hundred weeks there shall be one or more dependents under [sixteen] eight-
 70 een years of age compensation shall be continued for such dependents until
 71 they reach [sixteen] eighteen years of age at the schedule provided under
 72 paragraphs "a" to "f" of this section.

1 8. Section 34:15-14 of the Revised Statutes is amended to read as
2 follows:

3 34:15-14. No compensation other than medical aid shall accrue and be
4 payable until the employee has been disabled seven days, whether the days
5 of disability immediately follow the accident, or whether they be consecutive
6 or not. These days shall be termed the waiting period. The day that the
7 employee is unable to continue at work by reason of his accident, whether it
8 be the day of the accident or later, shall count as one whole day of the waiting
9 period. Should the total period of disability extend beyond [seven] four
10 weeks, additional compensation shall at once become payable covering the
11 above prescribed waiting period.

1 9. 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 consecu-
4 tively, and not concurrently, except as provided in section 34:15-15 of this
5 Title, as follows: First, medical and hospital services and medicines as
6 provided in said section 34:15-15. After the waiting period, compensation
7 during temporary disability. If total period of disability extends beyond
8 [seven] four weeks, compensation to cover waiting period. Following both,
9 either or none of the above, compensation consecutively for each permanent
10 injury. Following any or all or none of the above, if death results from the
11 accident, expenses of last sickness and burial. Following which compensation
12 to dependents, if any. [In no case shall the total number of weekly payments
13 be more than five hundred, except as provided in section 34:15-12, para-
14 graph "b," and section 34:15-13, paragraph "k," of this Title.]

1 10. Section 34:15-37 of the Revised Statutes is amended to read as
2 follows:

3 34:15-37. "Wages," when used in this chapter, shall be construed to
4 mean the money rate at which the service rendered is recompensed under the
5 contract of hiring in force at the time of the accident, and shall not include
6 gratuities received from the employer or others. Board and lodging when

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

1 11. Section 34:15-38 of the Revised Statutes is amended to read as
2 follows:

3 34:15-38. To calculate the number of weeks and fraction thereof that
4 compensation is payable for temporary disability, determine the number of
5 calendar days of disability from and including as a full day the day that the
6 employee is first unable to continue at work by reason of the accident, includ-
7 ing also Saturdays, Sundays and holidays, up to the first working day that the
8 employee is able to resume work and continue permanently thereat; sub-
9 tract from this number the waiting period and any days and fraction there-
10 of the employee was able to work during this time, and divide the remainder
11 by seven. If, however, the total period of disability extends beyond ~~seven~~
12 four weeks, the waiting period shall not be subtracted from the number
13 indicated above. The resulting whole number and sevenths will be the
14 required period for which compensation is payable on account of temporary
15 disability.

1 12. Section 34:15-64 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-64. The commissioner and the deputy commissioners may make
4 such rules and regulations for the conduct of the hearing not inconsistent
5 with the provisions of this chapter as may, in his judgment, be necessary.
6 The official conducting any hearing under this chapter may, in his discretion,
7 allow to the party in whose favor judgment is entered, costs of witness fees
8 and a reasonable attorney fee, not exceeding twenty per cent of the judg-
9 ment; and a reasonable fee not exceeding fifty dollars for any one witness,
10 or one hundred fifty dollars in any one case, for medical witnesses residing in
11 the State, when in his judgment the services of an attorney and medical wit-
12 nesses were necessary for the proper presentation of the case. When, how-
13 ever, prior to any hearing compensation has been offered or paid, the reason-
14 able allowance for attorney fee shall be based upon only that part of the
15 judgment or award in excess of the amount of compensation theretofore
16 offered or paid. When the amount of the judgment, or when that part of the
17 judgment or award in excess of compensation theretofore offered or paid, is
18 less than two hundred dollars, an attorney fee may be allowed not in excess
19 of fifty dollars.

20 All counsel fees of claimants' attorneys for services performed in mat-
21 ters before the workmen's compensation bureau, whether or not allowed as
22 part of a judgment, shall be first approved by the bureau before payment.
23 Whenever a judgment or award is made in favor of a petitioner, the deputy
24 commissioner shall direct amounts (including counsel fees and witness fees)
25 to be deducted for the petitioner's expenses and to be paid directly to the
26 persons entitled to the same, the remainder to be paid directly to the peti-
27 tioner.

1 13. 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 commis-
4 sioner, deputy commissioner, or referee, to the court of common pleas of the
5 county in which the accident occurred, by filing with the secretary of the
6 bureau, and with the clerk of the county where the accident occurred, a notice
7 of appeal. Such notice shall be filed within thirty days after the judgment
8 has been rendered and shall briefly describe the judgment and state the in-
9 tention of the party to appeal therefrom. The filing of notice shall stay the
10 execution of the judgment until the determination or dismissal of the appeal.
11 The appellant shall, within fifteen days after filing notice of appeal, send to
12 the clerk of the court of common pleas of the county in which the accident oc-
13 curred, a transcript of the record and testimony in the cause, which tran-
14 script shall be prepared by appellant and submitted to the secretary of the
15 bureau for certification. Within ten days after filing of transcript, a judge
16 of the court of common pleas, upon application of appellant, shall fix a time
17 and place for the hearing of the appeal, at least ten days' notice of which
18 shall be served upon the respondent by the appellant. The trial of the ap-
19 peal shall be based exclusively on the transcript of the record and testimony,
20 and at the time fixed for the hearing, argument may be presented by each
21 side to the judge, who shall in a summary manner decide the merits of the
22 controversy, and the judgment on any such appeal shall be conclusive and
23 binding. This determination shall be made within ninety days after the filing
24 of the transcript, regardless of whether or not the appeal has then been
25 heard or argued, and such determination shall be filed in writing with the
26 clerk of the common pleas court, and judgment shall be entered thereon in
27 the same manner as in causes tried in the court of common pleas. Subsequent
28 proceedings thereon shall only be for the recovery of moneys thereby de-
29 termined to be due. [Nothing herein contained shall be construed as limit-
30 ing the jurisdiction of the supreme court to review questions of law and fact
31 by certiorari.] Costs may be awarded by the judge in his discretion, and
32 when so awarded the same costs shall be allowed, taxed and collected as are
33 allowed, taxed and collected for like services in the common pleas courts.

34 In case the respondent, in said appeal, is unable to pay counsel, the judge of
35 the court of common pleas shall assign counsel to represent him. Any appeal
36 may be dismissed by the judge if the transcript of the record and testimony
37 is not transmitted, or if the appeal is not prosecuted in accordance with the
38 provisions of this chapter. Nothing herein contained shall be construed as
39 limiting the jurisdiction of the Supreme Court to review questions of law
40 and fact by certiorari. Appeals to the Court of Errors and Appeals may be
41 taken from a judgment of the Supreme Court only as limited by section
42 2:27-350 of the Revised Statutes.

1 14. This act shall take effect immediately.

STATEMENT

This act is in effect a revision of the workmen's compensation law, by specific amendments to recognized sections and a small amount of supplemental matter. The bill is intended principally to liberalize workmen's compensation benefits in accordance with the program outlined by Governor Edge in his First Annual Message to the Legislature (January 9, 1945). This is accomplished by raising the maximum weekly benefit to twenty-five dollars (\$25.00) and increasing the duration of weekly benefit payments for various injuries by, roughly, 25 to 35 per centum, following the recommendations contained in the Second Report of the Commission on Post-War Economic Welfare, submitted January 29, 1945. In addition, more detailed amendments are included to increase benefit payments in given instances.

A few changes relate to administration, and are designed to enable the workmen's compensation bureau to administer the law more effectively. A provision designed to eliminate delays on appeals to the courts of common pleas is also added.

SENATE, No. 87

STATE OF NEW JERSEY

INTRODUCED JANUARY 29, 1945

By Mr. VAN ALSTYNE

Referred to Committee on Judiciary

AN ACT relating to workmen's compensation, and amending sections 34:1-57, 34:15-10, 34:15-12, 34:15-13, 34:15-14, 34:15-16, 34:15-22, 34:15-26, 34:15-36, 34:15-37, 34:15-38, 34:15-53, 34:15-55.1, 34:15-64, 34:15-66, 34:15-75, and 34:15-95, and supplementing chapter fifteen 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. This act shall be known as the workmen's compensation amendments
2 of one thousand nine hundred and forty-five.

1 2. Section 34:1-57 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:1-57. The workmen's compensation bureau shall consist of the commis-
4 sioner who shall act as chairman, a director, deputy commissioners of com-
5 pensation appointed by the commissioner; and such referees and other
6 employees as may, in the judgment of the commissioner, be necessary.
7 Appointments under this section shall be made in accordance with the
8-9 provisions of Title 11, Civil Service.

10 The director of the bureau shall be designated by the commissioner
11 from among the deputy commissioners of compensation with approval of the
12 Governor. Such deputy commissioner shall also serve as secretary of the bu-
13 reau, and may continue to perform the duties of a deputy commissioner of
14 compensation. He shall receive compensation of nine thousand five hundred

15 dollars (\$9,500.00) per annum, and upon his designation he shall retain all
16 of his prior civil service status as a deputy commissioner of compensation
16½ under the provisions of Title 11, Civil Service.

17 The director, subject to supervision and direction of the commissioner,
18 shall:

19 (a) be the administrative head of the bureau;

20 (b) prescribe the organization of the bureau, and the duties of his
21 subordinates and assistants, except as may otherwise be provided by law;

22 (c) direct and supervise the activities of all members of the bureau;

23 (d) make an annual report to the commissioner of the work of the
24 bureau, which report shall be published annually for general distribution
25 at such reasonable charge, not exceeding cost, as the commissioner shall
26 determine.

1 3. The first director of the workmen's compensation bureau to be desig-
2 nated under this act shall be the deputy commissioner of compensation serv-
3 ing upon the effective date hereof in the capacity of secretary of the bureau.

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

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 fourteen years of age employed in
7 violation of the labor law or a minor between fourteen and eighteen years
8 of age employed, permitted or suffered to work without an employment
9 certificate or special permit if required by law or at an occupation prohibited
10 at the minor's age by law, a compensation or death benefit shall be payable
11 to the employee or his dependents which shall be double the amount payable
12 under the 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
14 conclusive evidence for an employer that the minor has reached the age
15-17 certified to therein and no extra compensation shall be payable to any

18 minor engaged in an employment allowed by the law for the age and sex
19 certified to in such certificate. If the certificate presented by the employee
20 as one issued to him shall have been really issued to another child and the
21 real age of the employee shall be such that his employment in any capacity
22 or in the particular capacity he was employed by the employer was prohib-
23 ited and if the employer shall show to the satisfaction of the workmen's
24 compensation bureau that he accepted the certificate in good faith as having
25 been issued to the employee and could not have, despite reasonable dili-
26 gence, discovered the fraud, in such event no extra compensation shall be
27 paid to the employee illegally employed.

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

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

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

1 5. 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, sixty-six and two-thirds
5 per cent of the wages received at the time of the injury, subject to a max-
6 imum compensation of twenty-five dollars per week and a minimum of ten
7 dollars per week. This compensation shall be paid during the period of such
8-10 disability, not, however, beyond three hundred weeks.

11 b. For disability total in character and permanent in quality, sixty-six
12 and two-thirds per cent of the wages received at the time of injury, sub-
13 ject to a maximum compensation of twenty-five dollars per week and a
14-16 minimum of ten dollars per week. This compensation shall be paid for
17 a period of four hundred and fifty weeks, at which time compensation pay-
18 ments shall cease unless the employee shall have submitted to such physi-
19 cal or educational rehabilitation as may have been ordered by the rehabili-
20 tation commission, and can show that because of such disability it is im-
21 possible for him to obtain wages or earnings equal to those earned at the
22 time of the accident, in which case further weekly payments shall be made
23 during the period of such disability, the amount thereof to be the previous
24 weekly compensation payment diminished by that portion thereof that the
25 wage, or earnings, he is then able to earn, bears to the wages received at
26 the time of the accident. If his wages or earnings equal or exceed wages
27 received at the time of the accident, then his compensation rate shall be
28 reduced to five dollars. In calculating compensation for this extension
29 beyond four hundred and fifty weeks the minimum provision of ten dol-
30 lars shall not apply. This extension of compensation payments beyond four
31 hundred and fifty weeks shall be subject to such periodic reconsiderations
32 and extensions as the case may require, and shall apply only to disability total
33 in character and permanent in quality, and shall not apply to any acci-
34 dent occurring prior to July fourth, nineteen hundred and twenty-three.

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

39 d. For the loss of the thumb, sixty-six and two-thirds per cent of daily
40 wages during seventy-five weeks.

41 e. For the loss of the first finger, commonly called index finger, sixty-
42 six and two-thirds per cent of daily wages during fifty weeks.

43 f. For the loss of a second finger, sixty-six and two-thirds per cent of
44 daily wages during forty weeks.

45 g. For the loss of a third finger, sixty-six and two-thirds per cent of
46 daily wages during thirty weeks.

47 h. For the loss of a fourth finger, commonly called little finger, sixty-
48 six and two-thirds per cent of daily wages during twenty weeks.

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

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

59 k. For the loss of a great toe, sixty-six and two-thirds per cent of daily
60 wages during forty weeks.

61 l. For the loss of one of the toes other than a great toe, sixty-six and
62 two-thirds per cent of daily wages during fifteen weeks.

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

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

68 o. For the loss of a hand, or of the thumb and the first and second fingers
69 (on one hand), or of four fingers (on one hand), sixty-six and two-thirds per
70-71 cent of the daily wages during two hundred and thirty weeks.

72 p. For the loss of an arm, sixty-six and two-thirds per cent of daily
73 wages during three hundred weeks.

74 q. For the loss of a foot, sixty-six and two-thirds per cent of daily
75 wages during two hundred weeks.

76 r. For the loss of a leg, sixty-six and two-thirds per cent of daily
77-78 wages during two hundred and seventy-five weeks.

79 s. For the loss of vision of an eye, sixty-six and two-thirds per cent of
80 daily wages during one hundred and fifty weeks.

80A ss. For the enucleation of an eye, sixty-six and two-thirds per cent of
80B daily wages during twenty-five weeks, in addition to such compensation, if
80C any, as may be allowable under subsection s.

81 t. For the loss of a natural tooth, sixty-six and two-thirds per cent
82 of daily wages for four weeks for each tooth lost.

83 u. For the total loss of hearing in one ear, sixty-six and two-thirds
84 per cent of daily wages during sixty weeks. For the total loss of
85 hearing in both ears by one accident, sixty-six and two-thirds per cent of
86 daily wages during two hundred weeks.

87 v. The loss of both hands, or both arms, or both feet, or both legs, or
88 both eyes, or any two thereof as the result of any one accident, shall con-
89 stitute total and permanent disability to be compensated according to the
90 provisions of paragraph "b."

91 vv. Amputation between the elbow and the wrist shall be considered as
92 the equivalent of the loss of a hand and amputation at the elbow shall be
93 considered equivalent to the loss of the arm. Amputation between the knee
94 and ankle shall be considered as the equivalent of the loss of a foot, and
95 amputation at the knee shall be considered equivalent to the loss of the leg.

96 w. In all lesser or other cases involving permanent loss, or where the
97 usefulness of a member or any physical function is permanently impaired,
98 the compensation shall be sixty-six and two-thirds per cent of daily wages,
99 and the duration of compensation shall bear such relation to the specific
100 periods of time stated in the above schedule as the disabilities bear to

101 those produced by the injuries named in the schedule. In cases in which
102 the disability is determined as a percentage of total and permanent disa-
103 bility the duration of the compensation shall be a corresponding portion of
104 five hundred and fifty weeks. Should the employer and employee be unable
105 to agree upon the amount of compensation to be paid in cases not covered
106 by the schedule, either party may appeal to the workmen's compensation
107 bureau for a settlement of the controversy.

108 x. Inguinal hernia is a disease which ordinarily develops gradually,
109 being very rarely the result of an accident. Where there is a real trau-
110 matic hernia resulting from the application of force directly to the abdom-
111 inal wall, either puncturing or tearing the wall, compensation will be al-
112 lowed. All other cases will be considered as either congenital or of slow
113 development and not compensable, being a disease rather than an accidental
114 injury; unless preponderant proof is offered that the hernia was
115 immediately caused by such sudden effort or severe strain that, first,
116 the descent of the hernia immediately followed the cause; second, that there
117 was severe pain in the hernial region; third, that there was such prostra-
118 tion that the employee was compelled to cease work immediately; fourth,
119 that the above facts were of such severity that the same was noticed by the
120 claimant and communicated to the employer within twenty-four hours after
121 the occurrence of the hernia (days when the business is not in operation,
122 such as Sundays, Saturdays or holidays shall be excluded from this twenty-
123 four-hour period); fifth, that there was such physical distress that the at-
124 tendance of a licensed physician was required within twenty-four hours after
125 the occurrence of the hernia. In the case of hernia as above defined, the
126 provisions of paragraph "a" of this section and sections 34:15-14 and
127 34:15-15 of this Title shall apply, until such time as the employee is able
128 to resume some kind of work with the aid of a truss or other mechanical
129 appliance. If the employee refuses to permit of an operation the employer
130 shall meet the requirements above specified, pay the reasonable costs of the
131 truss or other appliance found necessary, and also pay compensation for

132 twenty weeks, following which the obligation shall cease and terminate, unless
133 death results from the hernia, in which case the provisions of section 34:15-13
134 of this Title shall apply. However, if the employee shall elect to undergo
135 an operation, by a physician selected by the employer, the employer shall
136 meet all the expense incident to such operation and recovery, to-
137 gether with compensation as provided in paragraph "a" of this
138 section during the periods of disability prior to and following the
139 operation, subject to the provisions of said section 34:15-14. If
140 the employee refuses the services of the physician selected by the em-
141 ployer, preferring one of his own selection, the employer shall be relieved
142 of obligations concerning medical expense due to the operation and recov-
143 ery, but shall pay compensation during the prior and resulting periods of
144 disability. If death results from the hernia or operation, the provisions of
145 said section 34:15-13 shall apply.

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

149 z. In case of the death of the person from any cause other than the acci-
150 dent or occupational disease, during the period of payments for permanent
151 injury, the remaining payments shall be paid to such of his or her depend-
152 ents as are included in the provisions of said section 34:15-13 or, if no de-
153 pendants, the remaining amount due, but not exceeding two hundred
154 and fifty dollars, shall be paid in a lump sum to the proper person for
155 funeral expenses; but no compensation shall be due any other person than
156 the injured employee on account of compensation being paid in excess of
157 four hundred and fifty weeks on account of disability total in character and
158 permanent in quality as provided by paragraph "b" of this section.

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

2 34:15-13. In case of death, compensation shall be computed, but not dis-
3 tributed, on the following basis:

4 a. For one dependent, thirty-five per cent of wages.

5 b. For two dependents, forty per cent of wages.

6 c. For three dependents, forty-five per cent of wages.

7 d. For four dependents, fifty per cent of wages.

7½ e. For five dependents, fifty-five per cent of wages.

8 f. For six or more dependents, sixty per cent of wages.

9 g. The term "dependents" shall apply to and include any or all of the
10 following who are dependent upon the deceased at the time of accident or the
11 occurrence of occupational disease, or at the time of death, namely: Husband,
12 wife, parents, step-parents, grandparents, children, stepchildren, grandchild-
13 ren, child in esse, posthumous child, illegitimate children, brothers, sisters,
14 half-brothers, half-sisters, niece, nephew. Legally adopted children shall, in
15 every particular, be considered as natural children. Dependency shall be con-
16 clusively presumed as to the decedent's widow and natural children under
17 eighteen years of age who were actually a part of the decedent's
18 household at the time of his death. Every provision of this article applying to
19 one class shall be equally applicable to the other. Should any dependent of a
20 deceased employee die during the period covered by such weekly payments or
21 should the widow of a deceased employee remarry during such period, the
22 right of such dependent or of such widow to compensation under this section
23 shall cease. The foregoing schedule applies only to persons wholly depen-
24 dent, and in the case of persons only partially dependent, except in the case
25 of the widow and children who were actually a part of the decedent's house-
26 hold at the time of his death, the compensation shall be such proportion of the
27 scheduled percentage as the amounts actually contributed to them by the de-
28 ceased for their support constituted of his total wages and the provision as to
29 a ten-dollar minimum shall not apply to such compensation. In determining
30 the number of dependents, where the deceased employee was a minor, the
31 number of persons dependent upon the deceased employee shall be deter-
32 mined in the same way as if the deceased employee were an adult, notwith-
33 standing any rule of law as to the person entitled to a minor's wages.

34 h. Compensation shall be computed upon the foregoing basis. Distribu-
35 tion shall be made among dependents, if more than one, according to the

36 order of the workmen's compensation bureau, which shall, when applied to
37 for that purpose determine, upon the facts being presented to it, the propor-
38 tion to be paid to or on behalf of each dependent according to the relative
39 dependency. Payment on behalf of infants shall be made to the surviving
40 parent, if any, or to the statutory or testamentary guardian.

41 i. If death results from the accident or occupational disease, whether
42 there be dependents or not, expenses of the last sickness of the deceased em-
43 ployee shall be paid in accordance with the provisions for medical and hospi-
44 tal service as set forth in section 34:15-15 of this Title. Also the cost of
45 burial, not to exceed two hundred and fifty dollars (\$250.00), shall be paid
46 to the dependent or other person having paid said costs of burial. In the
47 event that the said dependent or other person has paid less than two hundred
48 and fifty dollars (\$250.00) the said dependent or other person shall be reim-
49 bursed in the amount paid and, if the costs of burial exceed the amount so
50 paid, the difference between the said amount and two hundred and fifty dol-
51 lars (\$250.00) or so much thereof as may be necessary to pay the costs of
52 burial, shall be paid to the undertaker or embalmer. In the event that no
53 part of the costs of burial has been paid, the amount of such cost of burial,
54 not to exceed two hundred and fifty dollars (\$250.00), shall be paid to the
55 undertaker or embalmer.

56 j. In computing compensation to those named in this paragraph, except
57 husband, wife, parents and step-parents, only those under eighteen or over
58 forty years of age shall be included and then only for that period in which
59 they are under eighteen or over forty; *provided, however,* that payments to
60 such physically or mentally deficient persons as are for such reason depend-
61 ent shall be made during the full compensation period of three hundred
62 weeks.

63 k. The maximum compensation in case of death shall be twenty-five dol-
64 lars per week and the minimum ten dollars per week, except in the case of
65 partial dependency as provided in this section. This compensation shall be
66 paid during three hundred weeks and if at the expiration of three hundred
67 weeks there shall be one or more dependents under eighteen years of age

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68 compensation shall be continued for such dependents until they reach eighteen
69 years of age at the schedule provided under paragraphs "a" to "f" of this
70 section.

1 7. Section 34:15-14 of the Revised Statutes is amended to read as
2 follows:

3 34:15-14. No compensation other than medical aid shall accrue and be
4 payable until the employee has been disabled seven days, whether the days
5 of disability immediately follow the accident, or whether they be consecutive
6 or not. These days shall be termed the waiting period. The day that the
7 employee is unable to continue at work by reason of his accident, whether it
8 be the day of the accident or later, shall count as one whole day of the waiting
9 period. Should the total period of disability extend beyond four weeks, ad-
10 ditional compensation shall at once become payable covering the above pre-
11 scribed waiting period.

1 8. 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 consec-
4 tively, and not concurrently, except as provided in section 34:15-15 of this
5 Title, as follows: First, medical and hospital services and medicines as
6 provided in said section 34:15-15. After the waiting period, compensation
7 during temporary disability. If total period of disability extends beyond
8 four weeks, compensation to cover waiting period. Following both,
9 either or none of the above, compensation consecutively for each permanent
10 injury. Following any or all or none of the above, if death results from the
11 accident, expenses of last sickness and burial. Following which compensation
12 to dependents, if any.

13 Where an employer or his insurance carrier desires to pay for or furnish
14 medical, surgical, or hospital treatment, drugs, orthopedic or prosthetic ap-
15 pliances, after the date when payments under section 34:15-12 and 34:15-13
16 of this Title have terminated, the employer or his insurance carrier may,
17 in writing, reserve the defense of the jurisdictional limitations provided by
18 sections 34:15-27, 34:15-34, 34:15-41 and 34:15-51 of this Title; *provided,*

19 that the reservation is approved by a deputy commissioner after advising
20 the petitioner personally of his rights and of the effect of such reservation.

1 9. Section 34:15-22 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-22. Procedure in case of dispute shall be in accordance with article
4 four of this chapter (Sec. 34:15-49 et seq.).

5 No agreement between an employee and his employer or insurance car-
6 rier for compensation shall operate as a bar to the formal determination of
7 any controversy, unless such agreement has been approved by a deputy com-
8 missioner in open court; *provided*, that after a petition has been filed and
9 when the petitioner is represented by an attorney licensed in the State of
10 New Jersey, and when it shall appear to the deputy commissioner that the
11 only issue involved is the extent of disability, the deputy commissioner may,
12 with the consent of the parties, after considering the sworn testimony of the
13 petitioner and such other witnesses present, together with any stipulations
14 of the parties, enter a determination and rule for judgment which shall in-
15 clude a finding of fact as to the amount of the then present disability. Such
16 determination and rule for judgment may be reopened only in accordance
17 with the provisions of section 34:15-27 of this Title.

1 10. Section 34:15-26 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-26. When any proceedings have been taken under the provisions
4 of article two of this chapter, the bureau or the judge of the court of com-
5 mon pleas shall, as a part of the determination and order, either for pay-
6 ment or for commutation of payment, settle and determine the amount of
7 compensation to be paid by the injured employee or his dependents, on be-
8 half of whom such proceedings are instituted, to his legal advisers, and it
9 shall be unlawful for any lawyer, or other person acting in that behalf, to
10 ask for, contract for or receive any larger sum than the amount so fixed; and
11 in the order determining weekly payments where no commutation is made,
12 the bureau or the said judge shall also determine the amount to be paid per

13 week from the compensation payment on account of the legal fee thus
 14 awarded, and it shall be unlawful for the legal adviser, or other person act-
 15 ing in that behalf, to ask for, contract for or receive a larger sum per week
 16 than the allowance thus determined.

1 11. 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
 5 as evidences reckless indifference to safety, or (3) intoxication, operating as
 6 the 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 an-
 10 other for financial consideration, exclusive of casual employments, which shall
 11 be 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
 13 connection with any business of the employer, as employment not regular,
 14 periodic or recurring; *provided, however*, that forest fire wardens and forest
 15 fire fighters employed by the State of New Jersey shall, in no event, be
 16 deemed 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 act-
 19 ing 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 12. Section 34:15-37 of the Revised Statutes is amended to read as fol-
 2 lows:

3 34:15-37. "Wages," when used in this chapter, shall be construed to
 4 mean the money rate at which the service rendered is recompensed under
 5 the contract of hiring in force at the time of the accident. Board and lodg-
 6 ing when furnished by the employer as part of the wages shall be included
 7 and valued at eight dollars per week, unless the money value of such advan-

8 tages shall have been otherwise fixed by the parties at the time of hiring.
9 Where prior to the accident, the rate of wages is fixed by the output of the
10 employee, the daily wage shall be calculated by dividing the number of days
11 the workman was actually employed into the total amount the employee
12 earned during the preceding six months, or so much thereof as shall refer to
13 employment by the same employer. Where the rate of wages is fixed by the
14 hour, the daily wage shall be found by multiplying the hourly rate by the
15 customary number of working hours constituting an ordinary day in the
16 character of the work involved. In any case the weekly wage shall be found
17 by multiplying the daily wage by five, or if the employee worked a greater
18 proportion of the week regularly, then by five and one-half, six, six and one-
19 half or seven, according to the customary number of working days constitut-
20 ing an ordinary week in the character of work involved. Five days shall
21 constitute a minimum week. Gratuities, received regularly in the course of
22 employment from others than the employer, shall be included in determining
23 the weekly wage only in those cases where the employer or employee has
24 kept a regular daily or weekly record of the amount of gratuities so received.
25 In such cases the average weekly amount of gratuities over a period of six
26 months, or for the entire time of employment, whichever period is less, shall
27 be added to the fixed weekly wage to determine the employee's total weekly
28 wage. If no such record has been kept, then the average amount of the
29 weekly gratuities shall be fixed as ten dollars per week.

1 13. Section 34:15-38 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-38. To calculate the number of weeks and fraction thereof that
4 compensation is payable for temporary disability, determine the number of
5 calendar days of disability from and including as a full day the day that the
6 employee is first unable to continue at work by reason of the accident, includ-
7 ing also Saturdays, Sundays and holidays, up to the first working day that the
8 employee is able to resume work and continue permanently thereat; sub-
9 tract from this number the waiting period and any days and fraction there-

10 of the employee was able to work during this time, and divide the remainder
11 by seven. If, however, the total period of disability extends beyond
12 four weeks, the waiting period shall not be subtracted from the number
13 indicated above. The resulting whole number and sevenths will be the
14 required period for which compensation is payable on account of temporary
15 disability.

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

3 34:15-53. Within ten days after the filing of an answer, or the expira-
4 tion of the time for filing an answer if no answer is filed, the secretary of
5 the bureau shall fix a time and place for hearing the petition, or shall send
6 the petition and answer or a transcript of the petition and answer to the
7 commissioner, a deputy commissioner or one of the referees, in which case
8 such commissioner, deputy commissioner or referee, within fifteen days after
9 the filing of the answer, shall fix a time and place for the hearing of the peti-
10 tion. Such time shall be not less than four weeks nor more than six weeks
11 after the filing of the petition. The petition shall be heard either in the
12 county in which the injury occurred or in which the petitioner or defendant
13 resides, or in which the defendant's place of business is located, or in which
14 the defendant may be served with process. When a time and place has been
15 fixed for such hearing, the commissioner, deputy commissioner or the
16 referee to whom the cause has been referred shall give at least ten days'
17 notice to each party of the time and place of hearing. The commissioner,
18 deputy commissioner or any referee to whom a cause has been referred,
19 shall have power to adjourn the hearing thereof from time to time in his
20 discretion.

1 15. Section 34:15-55.1 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-55.1. Any employer, not a resident of this State, or any employer
4 not licensed to do business in this State, or any resident employer who
5 becomes a nonresident of this State after the occurrence of an injury to an
6 employee, who shall employ or who shall have employed any person to

7 perform work, labor or services within this State shall be deemed by the
8 accepting of the privilege of engaging in such work, labor and services by
9 his or its employees to make, constitute and appoint the secretary of the
10 workmen's compensation bureau as his or its agent for the acceptance of
11 process in any proceeding by any such employee or dependent or representa-
12 tive of such employee, under and by virtue of this chapter; and the accept-
13 ance of such privilege or the entering into this State for the purpose of
14 engaging in such employment shall be a signification of such employer that
15 any such process issued against him or it, which is so served, shall be of the
16 same legal force and validity as if served upon him or it personally.

17 Service of such process shall be made by leaving a copy of the petition
18 with the secretary of the bureau, or some one designated by him in his office,
19 and such service shall be sufficient service upon such nonresident employer;
20 *provided*, that notice of such service and a copy of the petition are forth-
21 with sent by registered mail to the respondent to the address stated in such
22 petition, by the secretary of the bureau, or such person acting for him in his
23 office, and the respondent's return receipt and the affidavit of the secretary
24 of the bureau, or such person in his office acting for him, of the compliance
25 therewith are appended to such petition and filed in the office of the secre-
26 tary of the bureau wherein such action may be pending; *provided, also*,
27 that the date of the mailing and the date of the receipt of the return card
28 aforesaid are properly indorsed on such petition and signed by the secretary
29 of the bureau, or some one acting for him.

30 The workmen's compensation bureau in which such action is pending
31 may order such continuance as may be necessary to afford the respondent
32 a reasonable opportunity to defend the action. The secretary of the bureau
33 shall keep a record of all such processes which shall show the day and
34 hour of such service.

35 This section shall be construed to extend the right of service of process
36 upon nonresidents and shall not be construed as limiting any provisions
37 for the service of process now or hereafter existing.

1 16. Section 34:15-64 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-64. The commissioner and the deputy commissioners may make
4 such rules and regulations for the conduct of the hearing not inconsistent
5 with the provisions of this chapter as may, in his judgment, be necessary.
6 The official conducting any hearing under this chapter may, in his discretion,
7 allow to the party in whose favor judgment is entered, costs of witness fees
8 and a reasonable attorney fee, not exceeding twenty per cent of the judg-
9 ment; and a reasonable fee not exceeding fifty dollars for any one witness,
10 or one hundred fifty dollars in any one case, for medical witnesses residing in
11 the State, when in his judgment the services of an attorney and medical wit-
12 nesses were necessary for the proper presentation of the case. When, how-
13 ever, prior to any hearing compensation has been offered or paid, the reason-
14 able allowance for attorney fee shall be based upon only that part of the
15 judgment or award in excess of the amount of compensation theretofore
16 offered or paid. When the amount of the judgment, or when that part of the
17 judgment or award in excess of compensation theretofore offered or paid, is
18 less than two hundred dollars, an attorney fee may be allowed not in excess
19 of fifty dollars.

20 All counsel fees of claimants' attorneys for services performed in mat-
21 ters before the workmen's compensation bureau, whether or not allowed as
22 part of a judgment, shall be first approved by the bureau before payment.
23 Whenever a judgment or award is made in favor of a petitioner, the deputy
24 commissioner or referee shall direct amounts (including counsel fees and wit-
25 ness fees) to be deducted for the petitioner's expenses and to be paid directly
26 to the persons entitled to the same, the remainder to be paid directly to the
27 petitioner.

1 17. 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 commis-
4 sioner, deputy commissioner, or referee, to the court of common pleas of the

5 county in which the accident occurred, by filing with the secretary of the
6 bureau, and with the clerk of the county where the accident occurred, a notice
7 of appeal. Such notice shall be filed within thirty days after the judgment
8 has been rendered and shall briefly describe the judgment and state the in-
9 tention of the party to appeal therefrom. The filing of notice shall stay the
10 execution of the judgment until the determination or dismissal of the appeal.
11 The appellant shall, within fifteen days after filing notice of appeal, send to
12 the clerk of the court of common pleas of the county in which the accident oc-
13 curred, a transcript of the record and testimony in the cause, which tran-
14 script shall be prepared by appellant and submitted to the secretary of the
15 bureau for certification. Within ten days after filing of transcript, a judge
16 of the court of common pleas, upon application of appellant, shall fix a time
17 and place for the hearing of the appeal, at least ten days' notice of which
18 shall be served upon the respondent by the appellant. The trial of the ap-
19 peal shall be based exclusively on the transcript of the record and testimony,
20 and at the time fixed for the hearing, argument may be presented by each
21 side to the judge, who shall in a summary manner decide the merits of the
22 controversy, and the judgment on any such appeal shall be conclusive and
23 binding. This determination shall be made within ninety days after the filing
24 of the transcript, regardless of whether or not the appeal has then been
25 heard or argued, and such determination shall be filed in writing with the
26 clerk of the common pleas court, and judgment shall be entered thereon in
27 the same manner as in causes tried in the court of common pleas. Subsequent
28 proceedings thereon shall only be for the recovery of moneys thereby de-
29-31 termined to be due. Costs may be awarded by the judge in his discretion, and
32 when so awarded the same costs shall be allowed, taxed and collected as are
33 allowed, taxed and collected for like services in the common pleas courts.
34 In case the respondent, in said appeal, is unable to pay counsel, the judge of
35 the court of common pleas shall assign counsel to represent him. Any appeal
36 may be dismissed by the judge if the transcript of the record and testimony
37 is not transmitted, or if the appeal is not prosecuted in accordance with the

38 provisions of this chapter. Nothing herein contained shall be construed as
39 limiting the jurisdiction of the Supreme Court to review questions of law
40 and fact by certiorari. Appeals to the Court of Errors and Appeals may be
41 taken from a judgment of the Supreme Court only as limited by section
42 2:27-350 of the Revised Statutes.

1 18. Section 34:15-75 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-75. Compensation for injury and death, either or both, of any vol-
4 unteer fireman or of any forest fire warden or forest fire fighter employed
5 by the State of New Jersey, shall be based upon the weekly salary or com-
6 pensation received by such person in his private employment. Any such
7 person whose income is derived from any source other than wages or sal-
8 aries shall be entitled to receive the maximum compensation by this chap-
9 ter authorized. Compensation shall in no case exceed the sum of twenty-
10 five dollars per week, and where the fireman, forest fire warden or forest fire
11 fighter was not employed at the time of injury or death, compensation shall
12 be ascertained and paid upon the basis of the weekly compensation last
13 received by him when so employed.

1 19. Section 34:15-95 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-95. The sums collected under section 34:15-94 of this Title shall
4 constitute a fund out of which a sum shall be set aside each year by the
5 Commissioner of Labor from which compensation payments in accordance
6 with the provisions of paragraph (b) of section 34:15-12 of this Title shall
7 be made to persons totally disabled, as a result of experiencing a subsequent
8 permanent injury under conditions entitling such persons to compensation
9 therefor, when such persons had previously been permanently and partially
10 disabled from some other cause; *provided, however, that, notwithstanding*
11 *the time limit fixed therein, the provisions of paragraph (b) of said section*
12 *34:15-12 relative to extension of compensation payments beyond four hun-*
13 *dred and fifty weeks shall, with respect to payments from the fund consti-*

14 tuted pursuant to the provisions of this section, apply to any accident
15 occurring since June twenty-seventh, one thousand nine hundred and twenty-
16 three; *provided further, however*, that no person shall be eligible to receive
17 payments from such fund:

18 (a) If the disability resulting from the injury caused by his last
19 compensable accident in itself and irrespective of any previous condition
20 or disability constitutes total and permanent disability within the mean-
21 ing of this Title.

22 (b) If permanent total disability results from the aggravation, ac-
23 tivation or acceleration, by the last compensable injury, of a pre-existing
24 noncompensable disease or condition.

25 (c) If the disease or condition existing prior to the last compensable
26 accident is not aggravated or accelerated but is in itself progressive and
27 by reason of such progression subsequent to the last compensable acci-
28 dent renders him totally disabled within the meaning of this Title.

29 (d) If a person who is rendered permanently partially disabled by
30 the last compensable injury subsequently becomes permanently totally
31 disabled by reason of progressive physical deterioration or pre-existing
32 condition or disease.

33 Nothing in the provisions of said paragraphs a, b, c and d, however, shall
34 be construed to deny the benefits provided by this section to any person who
35 has been previously disabled by reason of total loss of, or total and perma-
36 nent loss of use of, a hand or arm or foot or leg or eye, when the total dis-
37 ability is due to the total loss of, or total and permanent loss of use of, two
38 or more of said major members of the body, or to any person who in succes-
39 sive accidents has suffered compensable injuries, each of which, severally,
40 causes permanent partial disability, but which in conjunction result in per-
41 manent total disability. Nor shall anything in paragraphs a, b, c and d,
42 aforesaid apply to the case of any person who is now receiving or who has
43 heretofore received payments from such fund.

44 Upon the approval of an application for benefits, the compensation pay-
45 able from such fund shall be made from the date when the final payment of
46 compensation by the employer is or was payable for the injury or injuries
47 sustained in the employment wherein the employee became totally and per-
48 manently disabled; provided, that no payment from such fund shall be made
49 for any period prior to the date of filing of application therefor; *provided,*
50 *however,* that a person who has received compensation payments from said
51 fund and who is reinstated or ordered placed on said fund shall receive pay-
52 ments from the date of last payment from said fund, save only in the case of
53 a person to whom payments have been made and then discontinued or sus-
54 pended because of the rehabilitation of such person in accordance with the
55 provisions of paragraph (b) of section 34:15-12 of this Title, in which case
56 payments from said fund shall be made from the date of filing application
57 for reinstatement. Payments to such totally disabled employees shall be
58 made from said fund by the State Treasurer upon warrants of the Commis-
59 sioner of Labor. This section shall be applicable to any accident occurring
60 since June twenty-seventh, one thousand nine hundred and twenty-three,
61 insofar as the eligibility of and benefits payable to such employee of this
62 class is concerned; *provided, however,* that nothing contained herein shall
63 limit or deprive those persons now receiving or who have received the ben-
64 efits under this section from participating in said fund. All payments from
65 the fund herein created shall be made by semi-monthly installment payments.
66 From the fund herein created the Commissioner of Labor may use in any
67 one fiscal year a sum not to exceed the sum of twelve thousand five hundred
68 dollars (\$12,500.00) for the cost of administration of the fund including per-
69 sonnel, printing, professional fees, and expenses incurred by the Commis-
70 sioner of Labor in the prosecution of defenses in the bureau, and of appeals
71 and proceedings for review of decisions on applications for benefits from said
72 fund. No costs or counsel fee for the applicant shall be allowed against the
73 fund.

74 The Commissioner of Labor shall annually submit an accounting of the
75 fund to the State Comptroller.

76 All payments into the fund established by section 34:15-95 of the Re-
77 vised Statutes which may have heretofore been made or required at any time
78 or times are hereby validated and confirmed, notwithstanding that at the
79 time of such payment or payments the fund may have equalled or exceeded the
80 sum of two hundred thousand dollars (\$200,000.00).

1 20. This act shall take effect immediately; *provided, however*, that the
2 amendments to section 34:15-12, 34:15-13, 34:15-36, 34:15-37, and 34:15-75
3 of the Revised Statutes shall apply to any accident or compensable occupa-
4 tional disease occurring on or after January first, one thousand nine hundred
5 and forty-six.

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).

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- 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

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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 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 pensation 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*
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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
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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%)
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80 hearing in both ears by one accident, sixty-six and two-thirds per centum
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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-
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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.

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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.

Copy 1

For materials see Copy 2

MEMORANDUM

TO: ~~Mr. [REDACTED]~~
FROM: Mrs. Herta Prager, Legislative Research Librarian
DATE: January 15, 1958
SUBJECT: Legislative History of 1% Law in Workmans' Compensation.

The 1% Compensation Fund was first enacted in 1923.

L. 1923, Ch. 81, Senate 236 by Mr. Richards

The bill and statement are enclosed in photostat.

There are no hearings or reports on this bill.

The law had the following amendments:

L. 1931, Ch. 108, Senate 255 by Mr. Abell

Statement

The object of this bill is to provide for the transfer of the collection of the tax on workmen's compensation from the Commissioner of Labor to the State Tax Commissioner as recommended by the State Audit and Finance Commissioner.

L. 1933, Ch. 456, Senate 517 by Mr. Ely

This act added the wording:

"The fund mentioned in this act may also be used, upon the order, in writing, of the Governor, to pay shortages occasioned by any defalcation occurring in the Workmen's Compensation Bureau of the Department of Labor."

Statement

The design of the above act is to permit the use of the above fund to pay the shortage occasioned by the defalcation of the officer in the Workmen's Compensation Bureau of the Labor Department.

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January 15, 1958

L. 1936, Chapter 55, A 169

The original bill with statement and the Assembly Committee Amendment are enclosed in photostat. (Amendments are underlined.)

L. 1938, Chapter 198, A 22, Mr. Paul Q.

The bill with statement and the amendments underlined are enclosed.

L. 1940, Chapter 133, A 284, Mr. Ferster

The bill with statement and the amendments underlined are enclosed.

L. 1945, Chapter 10, Senate 28 by Mr. Littell

Eliminated in sec. 34:15-94 the paragraph from:

"When the total amount of all such payments into the fund ... together with accumulated interest thereon."

Statement

The principal purpose of this bill is to remove the "ceiling" from the so-called one per centum, or second injury fund. As explained in Governor Edge's First Annual Message, the fund is used to pay workmen's compensation for permanent total disability which occurs following an industrial injury where partial disability already existed from some other cause. The employer remains liable for compensation with respect to the subsequent injury. The effect of this fund, with the removal of the ceiling, is to increase the desirability of employing disabled veterans.

Since the present \$200,000.00 maximum has already been reached, the Commissioner of Labor will not be able to accept or require payments due February 15, 1945, if the ceiling on the fund is not removed.

However, by Assembly Amendment the paragraph was reinserted and instead of eliminating the ceiling, it was raised from \$200,000.00 to \$1,500,000.00.

L. 1945, Chapter 74, S 87, Van Alstyne

This bill was introduced as a general revision of the workmen's compensation law and as first introduced did not affect the 1% fund. The changes concerning the fund were introduced by the Senate Judiciary Committee. (Photostat enclosed.)

See 34:15-10 et al for further history

January 15, 1958

L. 1950, Chapter 89, A 354, Mr. Jones

Bill with statement enclosed in photostat.

L. 1952, Chapter 80, A 386, Mr. Duffy

Bill enclosed.

L. 1954, Chapter 191, A 377, Mr. C. W. Haines

Bill enclosed.

The bills and statements and the amendments is all the material we could find. None of the reports or hearings deal with the 1% Fund. We have marked on the bills the changes as they occurred.

HP:JK
encls.

STATEMENT

The purpose of this act is to eliminate double bookkeeping in that the State Tax Commissioner receives the assessment. The Commissioner of Labor is charged with the responsibility of the administration of the act and the moneys should be paid to him direct.

The other purpose is to clarify the expression "some other cause" as unrelated to industrial operation.

Since this act was amended in 1936, Chapter 55, several claimants have filed claims and have been retroactive to 1911 whereas it was the intention that the benefits accrue as of the passage of the amendment of 1936.

This fund is collected for the benefit of workmen injured by industry and it is the purpose of this bill to so protect the fund for that purpose.

A22 (1938)

ASSEMBLY, No. 284

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1940.

By Mr. FERSTER

Referred to Committee on Municipalities

AN ACT concerning the disposition and payment of the funds collected under the provisions of section 34:15-94 of the Revised Statutes for the completion of compensation payments, and amending section 34:15-95 of the Revised Statutes as amended by chapter one hundred and ninety-eight of the laws of one thousand nine hundred and thirty-eight and amending sections two and three of an act entitled "An act concerning workmen's compensation by providing for a method of procedure by defining the period and extent of payments and by permitting the Rehabilitation Commission to use some of the moneys, all under the one per centum (1%) fund, and amending sections 34:15-94 and 34:15-95 of the Revised Statutes," approved May eighteenth, one thousand nine hundred and thirty-eight, being chapter one hundred ninety-eight of the laws of one thousand nine hundred and thirty-eight.

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

1 1. Section 34:15-95 of the Revised Statutes is amended to read as fol-
2 lows:

3 34:15-95. The sums collected under section 34:15-94 of this Title shall
4 constitute a fund out of which a sum shall be set aside each year by the
5 Commissioner of Labor from which compensation payments in accordance
6 with the provisions of paragraph (b) of section 34:15-12 of this Title shall

7 be made to persons totally disabled, as a result of experiencing a subsequent
8 permanent injury under conditions entitling such persons to compensation
9 therefor, when such persons had previously been permanently and partially
10 disabled from some other cause [.] ; provided, that the extension of compen-
11 sation payments beyond four hundred weeks as set forth in paragraph (b) of
12 section 34:15-12 of this Title shall apply to any accident occurring since
13 June twenty-seventh, one thousand nine hundred and twenty-three; provided,
14 however, that no person shall be eligible to receive the benefits provided for
15 herein, if:

16 a. The disability resulting from his last compensable accident in itself
17 and irrespective of his previous condition or disability, constitutes total and
18 permanent disability within the meaning of this Title; or

19 b. The last compensable accident aggravates or accelerates the previous
20 condition or disability and results in total and permanent disability within
21 the meaning of this Title; or

22 c. The disability existing prior to the last compensable accident is not
23 aggravated or accelerated but is in itself progressive and by reason of such
24 progression subsequent to the time of fixing of permanent disability for the
25 last compensable accident renders him totally disabled within the meaning of
26 this Title; or

27 d. The disability due to some other cause, resulting from physical de-
28 terioration due to natural causes or pre-existing disease, except occupa-
29 tional disease, together with the permanent disability resulting from the last
30 compensable accident, results in total and permanent disability within the
31 meaning of this Title;

32 Provided, however, the provisions of sections a, b, c and d shall not apply
33 to a person who has been previously disabled by reason of one hundred per
34 centum (100%) permanent disability of a hand or arm or foot or leg or eye,
35 or to a person whose total disability is the result of two or more accidents,
36 each causing a percentage of total disability and the combined disabilities

37 constituting total and permanent disability within the meaning of this Title
38 or to a person now receiving or who has received the benefits under this
39 fund.

40 **[In such cases]** Upon the approval of an application for benefits, the
41 compensation payable from such fund shall [cover that portion of the period
42 for which the employer is not legally responsible due to the permanent and
43 partial disability suffered or possessed by the employee at the time
44 that the employee sustained the injury as a result of which the em-
45 ployee became totally and permanently disabled.] be made from the
46 date that the application for benefits is filed with the Commis-
47 sioner of Labor of the State of New Jersey, as set forth in this
48 act; *provided*, that a person who has received compensation payments
49 from said fund and who is reinstated or ordered placed on said fund shall
50 receive payments from the date of last payment from said fund. Payments to
51 such totally disabled employees shall be made from said fund by the State
52 Treasurer upon warrants of the Commissioner of Labor. This section shall
53 be applicable to any accident occurring since July fourth, one thousand nine
54 hundred and nineteen, insofar as the eligibility of and benefits payable to
55 such employee of this class is concerned; *provided, however*, that nothing
56 contained herein shall [affect] limit or deprive those persons now receiving
57 or who have received the benefits under this section [or proceedings now
58 pending on appeal.] from participating in said fund. All payments from the
59 fund herein created shall be made by semimonthly installment payments.
60 The Rehabilitation Commission may use a sum not to exceed fifteen thousand
61 dollars (\$15,000.00) in any one fiscal year from the sums collected under this
62 section for rehabilitation of persons who are handicapped as a result of a
63 compensable industrial accident.

1 2. Section three of chapter one hundred ninety-eight of the laws of one
2 thousand nine hundred and thirty-eight is hereby amended to read as fol-
3 lows:

4 3. Applications for benefits under this act shall be made by a verified
 5 petition filed in duplicate within two years after the date of the last pay-
 6 ment of compensation by the employer or the insurance carrier addressed
 7 to the Commissioner of Labor of the State of New Jersey who shall refer it
 8 to a Deputy Commissioner of Workmen's Compensation to hear testimony
 9 and for an advisory report as to findings [.] ; provided, however, that the
 10 limitation herein shall not apply to those persons now receiving or who have
 11 received compensation payments from said fund and whose accident occurred
 12 since June twenty-seventh, one thousand nine hundred and twenty-three. The
 13 decision, however, as to whether the petitioner shall or shall not be admitted
 14 to the benefits shall be rendered by the said Commissioner of Labor. Review
 15 of said decision shall be in accordance with section 34:15-66 of the Revised
 16 Statutes. In all proceedings affecting the fund under this act the Commis-
 17 sioner of Labor shall be a necessary party.

1 3. This act shall take effect immediately.

_____ A284 (1940)

STATEMENT

The purpose of this act is to eliminate any inconsistencies which exist in the so-called State One Percent Fund by its reference to Revised Statutes 34:15-12 (b) of the Workmen's Compensation Act and to clarify the requirements of persons to become beneficiaries of this fund by the use of definite words herein.

The passage of this act will enable a totally blind man to receive the benefits under this act which have been denied him under the previous act because of technical language and will protect those persons who are now receiving the benefits under this act.

This fund is created by the payment by the insurance companies and self-insurers of one per centum (1%) of the compensation for the preceding year, and is for the benefit of workmen injured in industry who are totally disabled, and is not made up of moneys from taxation.

[OFFICIAL COPY REPRINT]
COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 284

STATE OF NEW JERSEY

ADOPTED MARCH 18, 1940

AN ACT concerning the disposition and payment of the funds collected under the provisions of section 34:15-94 of the Revised Statutes for the completion of compensation payments, and amending section 34:15-95 of the Revised Statutes as amended by chapter one hundred and ninety-eight, of the laws of one thousand nine hundred and thirty-eight, and amending sections two and three of an act entitled "An act concerning workmen's compensation by providing for a method of procedure, by defining the period and extent of payments all under the one per centum fund, and amending sections 34:15-94 and 34:15-95 of the Revised Statutes," approved May eighteenth, one thousand nine hundred and thirty-eight, being chapter one hundred ninety-eight of the laws of one thousand nine hundred and thirty-eight.

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

1 1. Section 34:15-95 of the Revised Statutes is amended to read as
2 follows:

3 34:15-95. The sums collected under section 34:15-94 of this Title shall
4 constitute a fund out of which a sum shall be set aside each year by the
5 Commissioner of Labor from which compensation payments in accordance
6 with the provisions of paragraph (b) of section 34:15-12 of this Title shall
7 be made to persons totally disabled, as a result of experiencing a subsequent
8 permanent injury under conditions entitling such persons to compensation
9 therefor, when such persons had previously been permanently and partially
10 disabled from some other cause; *provided, however, that, notwithstand-*

11 ing the time limit fixed therein, the provisions of paragraph (b) of said sec-
12 tion 34:15-12 relative to extension of compensation payments beyond four
13 hundred weeks shall, with respect to payments from the fund constituted
14 pursuant to the provisions of this section, apply to any accident occurring
15 since June twenty-seventh, one thousand nine hundred and twenty-three.

16 *Provided further, however,* that no person shall be eligible to receive
17 payments from such fund:

18 (a) If the disability resulting from the injury caused by his last com-
19 pensable accident in itself and irrespective of any previous condition or
20 disability, constitutes total and permanent disability within the meaning
21 of this Title.

22 (b) If permanent total disability results from the aggravation, acti-
23 vation or acceleration, by the last compensable injury, of a pre-existing
24 noncompensable disease or condition.

25 (c) If the disease or condition existing prior to the last compensable
26 accident is not aggravated or accelerated but is in itself progressive and
27 by reason of such progression subsequent to the last compensable acci-
28 dent renders him totally disabled within the meaning of this Title.

29 (d) If a person who is rendered permanently partially disabled by
30 the last compensable injury subsequently becomes permanently totally
31 disabled by reason of progressive physical deterioration or pre-existing
32 condition or disease.

33 Nothing in the provisions of said paragraphs a, b, c and d, however,
34 shall be construed to deny the benefits provided by this section to any per-
35 son who has been previously disabled by reason of total loss of, or total and
36 permanent loss of use of, a hand or arm or foot or leg or eye, when the total
37 disability is due to the total loss of, or total and permanent loss of use of,
38 two or more of said major members of the body, or to any person who in
39 successive accidents has suffered compensable injuries, each of which,
40 severally, causes permanent partial disability, but which in conjunction
41 result in permanent total disability. Nor shall anything in paragraphs a,

42 b, c and d. aforesaid apply to the case of any person who is now receiving or
43 who has heretofore received payments from such fund.

44 Upon the approval of an application for benefits, the compensation pay-
45 able from such fund shall be made from the date when the final payment of
46 compensation by the employer is or was payable for the injury or injuries
47 sustained in the employment wherein the employee became totally and per-
48 manently disabled; *provided*, that no payment from such fund shall be
49 made for any period prior to the date of filing of application
50 therefor; *provided, however*, that a person who has received com-
51 pensation payments from said fund and who is reinstated or or-
52-55 dered placed on said fund shall receive payments from the date of last
56 payment from said fund, save only in the case of a person to whom pay-
57 ments have been made and then discontinued or suspended because of the
58 rehabilitation of such person in accordance with the provisions of para-
59 graph (b) of section 34:15-12 of this Title, in which case payments from
60 said fund shall be made from the date of filing application for reinstatement.
61 Payments to such totally disabled employees shall be made from said fund by
62 the State Treasurer upon warrants of the Commissioner of Labor. This section
63 shall be applicable to any accident occurring since July fourth, one thousand
64 nine hundred and nineteen, insofar as the eligibility of and benefits payable
65 to such employee of this class is concerned; *provided, however*, that nothing
66 contained herein shall limit or deprive those persons now receiving
67 or who have received the benefits under this section from participating in
68 said fund. All payments from the fund herein created shall be made by
69 semimonthly installment payments.

1 2. Section three of chapter one hundred ninety-eight of the laws of one
2 thousand nine hundred and thirty-eight is hereby amended to read as fol-
3 lows:

4 3. Applications for benefits under this act shall be made by a verified
5 petition filed in duplicate within two years after the date of the last payment
6 of compensation by the employer or the insurance carrier addressed to the

7 Commissioner of Labor of the State of New Jersey who shall refer it to a
8 Deputy Commissioner of Workmen's Compensation to hear testimony and
9 for an advisory report as to findings; *provided, however,* that the
10 limitation herein shall not apply to those persons now receiving or who have
11 received compensation payments from said fund and whose accident occurred
12 since June twenty-seventh, one thousand nine hundred and twenty-three.
13 The decision, however, as to whether the petitioner shall or shall not be
14 admitted to the benefits shall be rendered by the said Commissioner of
15 Labor. Review of said decision shall be in accordance with section 34:15-66
16 of the Revised Statutes. In all proceedings affecting the fund under this act
17 the Commissioner of Labor shall be a necessary party.

1 3. This act shall take effect immediately.