

June 29, 1971

LEGISLATIVE HISTORY OF R.S.34:15-12 (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 - chap.93 - 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.

Ncte: 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. BOWEN

Referred to Committee on Judiciary

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

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

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

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

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

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

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

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

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

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

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

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

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

5298

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

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

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

1 6. This act shall take effect immediately.

STATEMENT

The purpose of these amendments is as follows:

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

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

To define more certainly the minimum compensation week.

SENATE, No. 55

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1942

By Mr. FARLEY

Referred to Committee on Labor, Industries and Social Welfare

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57 k. For the loss of a great toe, sixty-six and two-thirds per centum
58 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$)
69 of daily wages during two hundred thirty weeks.

70 q. For the loss of a foot, sixty-six and two-thirds per centum ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$) of daily wages during forty weeks. For the total loss of

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

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

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

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

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

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

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

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

1 2. This act shall take effect immediately.

STATEMENT

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

[OFFICIAL COPY REPRINT]

SENATE, No. 55

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 2, 1942

By Mr. FARLEY

Referred to Committee on Labor, Industries and Social Welfare

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

57 k. For the loss of a great toe, sixty-six and two-thirds per centum
58 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$)
69 of daily wages during two hundred thirty weeks.

70 q. For the loss of a foot, sixty-six and two-thirds per centum ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$)
73 of daily wages during one hundred seventy-five weeks.

74 s. For the loss of an eye, sixty-six and two-thirds per centum ($66\frac{2}{3}\%$)
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 ($66\frac{2}{3}\%$) 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 ($66\frac{2}{3}\%$) of daily wages during forty weeks. For the total loss of

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

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

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

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

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

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

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

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

1 2. This act shall take effect immediately.