

34:15-64

LEGISLATIVE HISTORY CHECKLIST

NJSA 34:15-64 (Workers comp cases--increases maximum amounts to medical witnesses)

LAWS 1981 CHAPTER 414

Bill No. S1557

Sponsor(s) Merlino

Date Introduced Oct. 9, 1980

Committee: Assembly Labor

Senate Labor, Industry and Professions

Amended during passage Yes ~~XXX~~ Amendments during passage denoted by asterisks

Date of Passage: Assembly Dec. 7, 1981

Senate Jan. 22, 1981

Date of approval Jan. 9, 1982

Following statements are attached if available:

Sponsor statement Yes ~~NOX~~

Committee Statement: Assembly Yes ~~NOX~~

Senate Yes ~~NOX~~

Fiscal Note ~~Yes~~ No

Veto Message ~~Yes~~ No

Message on signing ~~Yes~~ No

Following were printed:

Reports Yes ~~NOX~~

Hearings ~~Yes~~ No

Report, referred to in statements:

974.90 New Jersey. Workmen's compensation Study Commission Report...

E55 Sept. 30, 1973. Newark, 1973.

1973a see p. 667

6/22/81

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414

1-9-82

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[OFFICIAL COPY REPRINT]
SENATE, No. 1557

STATE OF NEW JERSEY

INTRODUCED OCTOBER 9, 1980

By Senator MERLINO

Referred to Committee on Labor, Industry and Professions

AN ACT concerning workers' compensation and amending
R. S. 34:15-64.

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

1 1. R. S. 34:15-64 is amended to read as follows:

2 34:15-64. The commissioner, director and the ***[deputy direc-**
3 **tors]*** **judges of compensation** may make such rules and regu-
4 lations for the conduct of the hearing not inconsistent with the
5 provisions of this chapter as may, in the commissioner's judgment,
6 be necessary. The official conducting any hearing under this chapter
7 may allow to the party in whose favor judgment is entered, costs
8 of witness fees and a reasonable attorney fee, not exceeding 20%
9 of the judgment; and a reasonable fee not exceeding **[\$50.00]**
10 *\$250.00* for any one witness*, *but not more than \$150.00 for a*
10A *medical witness who does not appear in court but prepares a*
10B *written report** or **[\$150.00]** *\$750.00* in any one case, for medical
11 witnesses residing in the State when in the official's judgment the
12 services of an attorney and medical witnesses were necessary for
12A the proper presentation of the case. **In determining a reasonable*
12B *fee for medical witnesses, the official shall consider (a) the time,*
12C *personnel, and other cost factors required to conduct the examina-*
12D *tion; (b) the extent, adequacy and completeness of the medical*
12E *evaluation; (c) the objective measurement of bodily function and*
12F *the avoidance of the use of subjective complaints; and (d) the*
13 *necessity of a court appearance of the medical witness.** When,
14 however, at a reasonable time, prior to any hearing compensation
15 has been offered and the amount then due has been tendered in good
16 faith or paid within 26 weeks from the date of the notification to the
17 employer of an accident or an occupational disease or the em-
18 ployee's final active medical treatment or within 26 weeks after the

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

19 employee's return to work whichever is later or within 26 weeks
 20 after employer's notification of the employee's death, the reasonable
 21 allowance for attorney fee shall be based upon only that part of
 22 the judgment or award in excess of the amount of compensation,
 23 theretofore offered, tendered in good faith or paid. When the
 24 amount of the judgment, or when that part of the judgment or
 25 award in excess of compensation, offered, tendered in good faith
 25A or paid as aforesaid, is less than \$200.00, an attorney fee may be
 25B allowed not in excess of \$50.00.

26 All counsel fees of claimants' attorneys for services performed
 27 in matters before the Division of Workers' Compensation, whether
 28 or not allowed as part of a judgment, shall be first approved by
 29 the division before payment. Whenever a judgment or award is
 30 made in favor of a petitioner, the ***[deputy directors]*** ***judges of**
 31 ***compensation*** or referees ***of formal hearings*** shall direct
 32 amounts to be deducted for the petitioner's expenses and to be paid
 33 directly to the persons entitled to the same, the remainder to be
 34 paid directly to the petitioner.

1 2. This act shall take effect immediately ***and shall apply only to**
 2 ***those claims filed after January 1, 1980*.**

26 All counsel fees of claimants' attorneys for services performed
 27 in matters before the Division of Workers' Compensation, whether
 28 or not allowed as part of a judgment, shall be first approved by
 29 the division before payment. Whenever a judgment or award is
 30 made in favor of a petitioner, the deputy directors or referees
 31 shall direct amounts to be deducted for the petitioner's expenses
 32 and to be paid directly to the persons entitled to the same, the
 33 remainder to be paid directly to the petitioner.

1 2. This act shall take effect immediately.

STATEMENT

This bill increases the maximum amounts payable in workers' compensation cases to medical witnesses.

The current limitations of \$50.00 for any one witness and \$150.00 in any one case were established in the year 1925, at a time when workers' compensation cases consisted almost entirely of traumatically induced injuries and only a few strictly defined occupational diseases. Under the Occupational Disease Act of 1950, there has been a great increase in the number of occupational disease claims. These claims require complete physical examinations and extensive laboratory procedures and tests for proper determination of compensability and disability. The fee schedule established in 1925 is totally inadequate to enable an injured worker to obtain a proper evaluation of his condition; therefore, many workers are deprived of the opportunity to fully establish their claims, and judges of compensation are frequently deprived of competent guidance by medical experts in the various diseases and disabilities which are presented before them.

This amendment changing the limitation to \$250.00 with respect to any one witness and \$750.00 with respect to any one case, is necessary and long overdue.

The official report of the "New Jersey Workmen's Compensation Study Commission" (Debevoise Commission) noted that the present fee schedule "is unreasonable" and recommended that the setting of fees should be left to the rule-making authority of the Department of Labor and Industry and Division of Workers' Compensation. Under this bill the department and division would still have their inherent right to establish rules for the guidance of compensation judges, but would be subject to the mandatory cap established by the Legislature.

S1557(1980)

ASSEMBLY LABOR COMMITTEE

STATEMENT TO

SENATE, No. 1557

with Assembly committee amendments

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STATE OF NEW JERSEY

DATED: NOVEMBER 30, 1981

The Assembly Labor Committee reports this bill favorably, with committee amendments, to raise the maximum fee amounts payable to medical witnesses at workers' compensation formal hearings from \$50.00 to \$250.00 for any one witness and from \$150.00 to \$750.00 for three or more witnesses in any one case. Further, it endorses the sponsor's and Senate committee's statements as adequately expressing the bill's purpose and provisions.

The committee, in reporting the bill, concurred with the Appellate Division in a 1978 case, *Wright v. Plaza Ford*, 164 N. J. Super 203, that the current fee limitation, unchanged in decades, "may be economically unrealistic today." It is intended that the upgrading of the maximum fees recoverable in such proceedings will serve as a greater incentive for medical witnesses—ranging from x-ray technicians to physicians—to conduct more thorough examinations of petitioners and to be more willing to attend formal hearings for purposes of providing oral testimony. Workers have reportedly had some difficulty in the past in getting doctors to testify on their behalf due to the statute's existing limitations.

The committee amended the bill to limit the application the new fee ceilings to claims filed after January 1, 1980, which roughly synchronizes with the effective date of the Workers' Compensation Amendments of 1979. Further amendments were approved to (1) set a separate ceiling of \$150.00 on payments to witnesses who prepare written reports but do not appear in court; and (2) establish criteria for evaluating the reasonableness of individual medical witness fee amounts.

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

STATEMENT TO

SENATE, No. 1557

STATE OF NEW JERSEY

DATED: DECEMBER 11, 1980

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