

New Jersey
Department of Labor and Industry

Brendan Byrne, Governor
John J. Horn, Commissioner

A Report On

The Workers' Compensation Amendments of 1979

(Chapters 283 and 285 of the Laws of 1979)

July 1, 1981

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A Report On

The Workers' Compensation Amendments of 1979

(Chapters 283 and 285 of the Laws of 1979)

July 1, 1981

Office of Income Security
Arthur J. O'Neal, Jr., Assistant Commissioner

Division of Workers' Compensation
Alfred J. Napier, Chief Judge and Acting Director

The Workers' Compensation Amendments of 1979 contained special provisions which require the Commissioner of Labor and Industry to report upon program experience under the revised law, on or before July 1, 1981. Chapter 283, omnibus workers' compensation legislation, specifies that ". . . the Commissioner of Labor and Industry shall submit an accounting of the overall experience with this act to the Senate Labor, Industry and Professions Committee and the Assembly Labor Committee." Chapter 285, hearing loss legislation, specifies that ". . . The Commissioner of Labor and Industry shall submit an accounting of the overall experience with this act to the appropriate legislative committees and leadership of both houses of the Legislature." This report is submitted in fulfillment of those statutory reporting requirements.

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A Report to the Legislature:

In The Senate,

Honorable Joseph P. Merlino, President
Honorable Matthew Feldman, President Pro Tem
Honorable Carmen A. Orechio, Senate Majority Leader
Honorable Barry T. Parker, Senate Minority Leader

and

The Senate Labor, Industry and Professions Committee

Honorable Eugene J. Bedell, Chairman
Honorable James A. Galdieri
Honorable John T. Gregorio
Honorable Brian T. Kennedy
Honorable James H. Wallwork

In The Assembly,

Honorable Christopher J. Jackman, Speaker
Honorable Thomas J. Deverin, Speaker Pro Tem
Honorable Alan J. Karcher, Assembly Majority Leader
Honorable James R. Hurley, Assembly Minority Leader

and

The Assembly Labor Committee

Honorable Joseph D. Patero, Chairman
Honorable Thomas A. Gallo, Vice Chairman
Honorable Leanna Brown
Honorable Thomas F. Cowan, Sr.
Honorable Chuck Hardwick
Honorable Robert E. Littell
Honorable Jimmy Zangari



STATE OF NEW JERSEY
DEPARTMENT OF LABOR AND INDUSTRY

JOHN J. HORN, COMMISSIONER

LABOR AND INDUSTRY
BUILDING

CN 110
TRENTON, N. J. 08625

July 1, 1981

Senate President and President Pro Tem
Senate Majority and Minority Leaders
Senate Labor, Industry and Professions Committee
Assembly Speaker and Speaker Pro Tem
Assembly Majority and Minority Leaders
Assembly Labor Committee

Distinguished Leaders and Committee Members:

The Workers' Compensation Amendments of 1979 (Chapters 283 and 285 of the Laws of 1979), represent the most sweeping legislative changes in the history of the program.

This report provides an overall accounting of the experience with these amendments, through March 1981.

To date, however, the vast majority of formal case closings are being adjudicated under the provisions of the "old law". From January 1980 through March 1981, only 2% of formal case closings were adjudicated under the provisions of the "new law". Because we are in the midst of a phase-in period, I urge you to use caution in any attempts to draw conclusions about the impact of the legislation based upon the statistical record which has been compiled thus far.

A follow-up report is planned for July 1, 1982.

Sincerely,

COMMISSIONER

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Introduction

INTRODUCTION

The Workers' Compensation Amendments of 1979 had two overriding goals: (1) to reduce the number of permanent partial awards for minor injuries; and (2) to increase the amount of permanent partial and permanent total awards to seriously injured workers.

Each of these goals is statistically measurable. However, because experience under the new law is very limited--only 2% of formal case closings under the new law from January 1980 through March 1981--it is impossible to draw any firm conclusions about the degree of success in attaining these legislative goals.

This report does, however, present the statistical record, and new law/old law comparisons, through March 1981. In addition, the report includes a synopsis of the legislation and establishes both an historical and statistical framework for a thorough evaluation of the impact of the legislation in the future.

There are several key workers' compensation terms used throughout the report. Six key terms--DIRECT SETTLEMENT, INFORMAL HEARING, FORMAL HEARING, TEMPORARY DISABILITY, PERMANENT PARTIAL DISABILITY and PERMANENT TOTAL DISABILITY--are defined in Appendix A of the report.

Finally, the following excerpts from Chapters 283 and 285 of the Laws of 1979 summarize the administrative monitoring and reporting responsibilities as established by the Workers' Compensation Amendments of 1979.

PL 1979, CHAPTER 283

"18. (New section) On or before July 1, 1981, the Commissioner of Labor and Industry shall submit an accounting of the overall experience with this act to the Senate Labor, Industry and Professions Committee and the Assembly Labor Committee. The Commissioner of Labor and Industry shall specifically report in detail the degree of success changes herein have achieved in increasing awards to the seriously injured and the curtailment of abuses by participants in accomplishing the reforms sought in this act. The commissioner shall also prepare a monthly analysis of all claims handled in the State. Such analysis shall be available to interested parties and shall include each claim filed and each claim settled during the month of his report. The commissioner's monthly report shall include specific details of the final disposition of claims including the nature and extent of disability, the amounts awarded in the judgments to the petitioner, and to the attorneys, doctors and witnesses of the petitioner."

PL 1979, CHAPTER 285

"14. On or before July 1, 1981, the Commissioner of Labor and Industry shall submit an accounting of the overall experience with this act to the appropriate legislative committees and leadership of both Houses of the Legislature. The Commissioner of Labor and Industry shall specifically report in detail the degree of success changes herein have achieved in increasing awards to workers with serious hearing losses and in standardizing the evaluation of occupational hearing loss. The commissioner shall also prepare a monthly analysis of all claims handled in the State. The analysis shall be available to interested parties and shall include each hearing loss claim filed and each claim settled during the month of his report. The commissioner's monthly report shall include specific details of the final disposition of claims including the nature and extent of disability, the amount awarded in the judgments to the petitioner, his attorneys and doctors and his witnesses."

SUMMARY OF FINDINGS

This report on the Workers' Compensation Amendments of 1979 is an interim report.

Since passage of the legislation, only a small percentage of formally closed cases have been subject to the provisions of the new law. From January 1980 through March 1981, only 2% of formal case adjudications were related to the provisions of the new law.

Cumulative new law case experience through March 1981 indicates that new law cases which have been processed thus far are atypical. These earliest new law case closings tend to involve less serious injuries; the more serious injury cases, involving extended medical treatment, have not yet been scheduled for formal hearings. Section 34:15-16 of the Workers' Compensation Law specifies that:

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

There are certain exceptions to this 26 week waiting period. Even so, only one formal case involving the payment of permanent

compensation was closed during the first six months of program operations under the provisions of the new law. This 26 week rule largely explains why there have been so few adjudications under the provisions of the new law through March 1981. In addition, an abnormally high rate of workers' compensation claims in 1979, 61,000, and an abnormally low rate of workers' compensation claims in 1980, 47,000, have resulted in a relatively larger pool of old law cases and a relatively smaller pool of new law cases available for formal hearing assignments. The many old law/new law comparisons contained in this report, therefore, must be interpreted with extreme caution.

It is too early to draw any firm conclusions about the ultimate impact of the legislation.

The following Summary of Findings, while not conclusive in terms of cost and social impact of the legislation, highlights early experience under the law and identifies major areas of inquiry which will be pursued in the future.

- The major goals of the Workers' Compensation Amendments of 1979 were (1) to reduce the number of permanent partial awards for minor injuries, and (2) to increase the amount of awards to seriously injured workers.
- Formal closed cases--those disposed of through a formal adjudication process--accounted for 89% of all dollars awarded in each of the past three years. Permanent partial cases and serious injury cases are most frequently disposed of through the formal hearing process. Analyses throughout the report, therefore, concentrate upon formal closed cases.
- During calendar year 1980, a total of 40,123 cases were closed through the formal hearing process; 39,827 were related to the old law; 296 were related to the new law.

- During the first quarter of 1981, a total of 11,257 cases were closed through the formal hearing process; 10,637 were related to the old law; 620 were related to the new law.
- Under the provisions of the old law, the average compensation paid per compensated formal case in 1980 was \$3,514; this average increased to only \$3,579 during the first quarter of 1981. In contrast, the new law average compensation paid per compensated formal case increased from \$2,778 in 1980 to \$3,486 during the first quarter of 1981. This rapid increase reflects the phasing-in of the new law.
- From January 1980 through March 1981, under the provisions of the old law, there were 295 compensable heart attack cases; the average compensation per case was \$18,409. There was only one formal heart attack award during this period under the provisions of the new law; total compensation was \$1,602.
- From January 1980 through March 1981, under the provisions of the old law, there were 1,496 compensable hearing loss cases; the average compensation per case was \$1,235. There were 19 formal hearing loss awards during this period under the provisions of the new law; the average compensation per case was \$1,528.
- The filing pattern of formal claims petitions has been erratic. The rate increased from 50,000 in 1978 to 61,000 in 1979, as injured workers filed promptly, anticipating the more restrictive provisions of the new law. In 1980, the rate declined to 47,000 as some workers have intentionally delayed the filing of new claims, on advice of Counsel, until a body of precedent cases is more clearly defined, offering guidelines on how best to pursue individual workers' compensation claims.
- New statutory provisions regarding pre-existing conditions may shift some liabilities from employers, and their insurance carriers, to the Second Injury Fund. No cost impact has yet been discerned. This potential shifting of liability will be closely monitored to evaluate the overall long term impact of the legislation.
- A comprehensive data collection and evaluation program for a thorough study of the new law is set in place.
- A follow-up report, evaluating the impact of Chapters 283 and 285 of the laws of 1979 is planned for July 1, 1982.

A Brief History of Workers' Compensation in New Jersey

I. A BRIEF HISTORY OF
WORKERS' COMPENSATION IN NEW JERSEY

New Jersey's workers' compensation program dates back to 1911. It was one of the first state workers' compensation laws which was upheld as constitutional by the courts. Within a decade, a total of 45 states had enacted workers' compensation legislation.

THE TURN OF THE CENTURY

Workers' compensation was a radical idea at the turn of the century. As the industrialization process was transforming the land and the workplace, new machines, mines and factories were exposing workers to new risks and serious injuries. The common law remedies available to injured workers were inadequate.

The common law principles of "assumed risk", "fellow servant negligence" and "contributory negligence" worked to defeat the majority of court claims for work related compensation benefits.

The principle of "assumed risk" held that workers were free to choose the employers for whom they would labor; workers were aware of the risks associated with the line of employment they chose to pursue; and workers assumed the risks and the financial burdens related to on-the-job accidents and injuries which might

occur. If the employer had been clearly negligent, the injured worker might eventually collect some money for damages. However, the principle of "fellow servant negligence" further worked to defeat regular court claims for work related injuries and medical expenses.

The principle of "fellow servant negligence" held that, if an accident was the result of the negligence of a co-worker, the legal remedy must be through court claims against the co-worker--not through claims against the employer. More likely than not, the fellow servant would have little or no assets from which a meaningful judgment might be derived. And, of course, if the injury was related to negligence on the part of the worker, this "contributory negligence" could be used as evidence to defeat a claim against the employer.

Typically, most injured workers received no financial assistance through the courts; the small percentage of injured workers who succeeded in winning court awards often would receive very large amounts of compensation.

The need for reform was obvious. As poor working conditions and thwarted worker rights became of greater popular concern, the idea of a specialized workers' compensation system became more widely accepted.

NEW JERSEY'S WORKERS' COMPENSATION LAW, 1911

New Jersey's workers' compensation law was approved by Governor Woodrow Wilson on April 4, 1911. It became effective on July 4, 1911

Much of the resistance to workers' compensation involved concern about the "compulsory" nature of the program. The designers of New Jersey's program addressed this concern by establishing an "elective" workers' compensation program. All covered employers had to provide insurance protection for workers in their employ. However, either the employer or individual workers could elect to route future claims through the regular courts as opposed to special workers' compensation courts. Election to reject the special workers' compensation program is virtually unknown in New Jersey.

MAJOR PROGRAM DEVELOPMENTS OVER THE YEARS

The problem of pre-existing disabilities was first addressed in 1923. A Special Compensation Fund, popularly referred to as the Second Injury Fund, was established in that year. This fund is utilized as a common reinsurance mechanism to cover certain higher risk workers--those with pre-existing disabilities--against the contingencies of total disability or death, as a result of work related accidents or illnesses.

Over the years, the scope of coverage was broadened to include all but casual workers. In 1950 the law was further amended to include all occupational diseases.

A special Uninsured Employers Fund was established in 1967; the revenue mechanism for this fund--certain fines and penalties for non-compliance--have proven to be inadequate. No monies have

yet been disbursed because the start-up threshold as prescribed by law, \$100,000, has not yet been accumulated.

In 1974, an open ended statute of limitations for occupational diseases was introduced.

These major amendments, and periodic adjustments of benefit schedules, have reshaped the program over the past 70 years. However, the amendments of 1979, the subject of this report, represent the most sweeping changes in the program since its inception in 1911.

I. Workers' Compensation Cases, 1960-1980

II. WORKERS' COMPENSATION CASES, 1960-1980

A brief review of workers' compensation cases over the past two decades can serve as a frame of reference for evaluating the impact of the new legislation.

CLOSED CASES, 1960-1980

Table 1 on the following page presents a wide range of historic data.

Closed cases (Column 5) increased from 55,700 in 1960 to 64,000 in 1980. This rate of increase (15%) was very moderate compared to the corresponding rates of increase in Employment (42%) and Reported Accidents (46%) during the same 20 year period.

Reported Accidents as a Percentage of Employment (Column 7) have consistently ranged from 8% to 9% in recent years.

Closed Cases as a Percentage of Employment (Column 8) have remained consistent for the past nine years, ranging between 1.9% and 2.1%. A precipitous change in this rate during the 1980's might be used as one aggregate measure of the impact of the new law. In the short run, however, e.g. 1980 through 1983, this measure will need to be interpreted with extreme caution. Workers' compensation claims have declined since the new law became

Table 1

CLOSED CASES
AND RELATED STATISTICS

1960 - 1980

YEAR (1)	NEW JERSEY POPULATION (2) (000)	NEW JERSEY EMPLOYMENT (3) (000)	REPORTED ACCIDENTS (4) (000)	CLOSED CASES (5) (000)	COMPENSATION PAID (6) (000,000)	REPORTED ACCIDENTS AS A % OF EMPLOYMENT (7)	CLOSED CASES AS A % OF EMPLOYMENT (8)	AVERAGE COMPENSATION PER CLOSED CASE (9)		CONSTANT 1980 DOLLARS (10)
								CURRENT DOLLARS		
1960	6,070.8	2,337.2	188.2	55.7	\$ 43.9	8.1%	2.4%	\$ 788	\$2,203	
1961	6,222.2	2,355.9	193.0	58.0	48.2	8.2	2.5	831	2,300	
1962	6,370.1	2,415.0	204.3	56.3	50.7	8.5	2.3	901	2,466	
1963	6,503.2	2,447.9	216.8	56.0	56.3	8.9	2.3	1,005	2,718	
1964	6,614.6	2,489.6	227.5	55.2	63.8	9.1	2.2	1,156	3,087	
1965	6,720.3	2,582.2	236.2	56.4	63.5	9.1	2.2	1,126	2,955	
1966	6,821.1	2,665.3	247.4	56.2	67.7	9.3	2.1	1,205	3,074	
1967	6,917.5	2,701.0	249.3	58.9	75.6	9.2	2.2	1,284	3,184	
1968	7,012.8	2,730.0	251.0	67.4	90.1	9.2	2.5	1,337	3,182	
1969	7,103.3	2,805.0	253.5	55.5	81.8	9.0	2.0	1,474	3,330	
1970	7,193.0	2,846.0	242.2	59.0	94.3	8.5	2.1	1,598	3,407	
1971	7,273.0	2,819.0	235.2	68.2	111.5	8.3	2.4	1,635	3,344	
1972	7,322.0	2,923.0	240.7	58.1	105.6	8.2	2.0	1,818	3,598	
1973	7,316.0	2,994.0	260.0	59.1	107.2	8.7	2.0	1,814	3,379	
1974	7,312.0	3,002.0	262.1	59.2	109.2	8.7	2.0	1,845	3,098	
1975	7,313.0	2,908.0	231.8	54.1	119.9	8.0	1.9	2,216	3,408	
1976	7,312.0	2,949.0	238.3	59.5	104.5	8.1	2.0	1,756	2,555	
1977	7,306.0	3,038.0	259.2	62.3	132.9	8.5	2.1	2,113	2,886	
1978	7,316.0	3,179.0	277.8	64.9	141.1	8.7	2.0	2,174	2,761	
1979	7,332.0	3,293.0	285.5	68.5	148.8	8.7	2.1	2,172	2,474	
1980	7,335.8	3,323.0	275.7	64.0	155.0	8.3	1.9	2,422	2,422	

1/ SOURCE: New Jersey Profile (1981), years 1960-1979; New Jersey Preliminary Census Counts (1980), year 1980.

2/ SOURCE: New Jersey Department of Labor and Industry, years 1970-1980.

3/ SOURCE: Department of Labor and Industry Annual Report, 1980; Compensation paid does not include medical treatment costs.

4/ Column (4) = Column (3) - Column (7); Column (5) = Column (3) - Column (6); Column (6) = Column (5) - Column (9).

5/ Based on the U.S. consumer price index as reported by the U.S. Dept. of Labor, assumes constant 1980 dollars at the July 1980 CPI index level of 248.0. 1967 = 100.0.

6/ All cases analyzed separately and discontinued; these average figures are for all closed cases, rather than averages for general categories.

effective; a part of this decline may be explained by the voluntary withholding of claims in some instances (claims may be filed up to two years after the accident, illness or last payment of compensation), at the advice of counsel, until a body of precedent cases can be identified, giving attorneys and petitioners guidance about how best to pursue their unique claims. For instance, a precedent case or appellate opinion under the new law may reveal that a given client's claim for benefits would have little chance of succeeding through a formal hearing. Given this precedent, the attorney would be more inclined to avoid a formal hearing, seeking settlement of the claim through other channels or choosing not to undertake representation because of poor likelihood of adequate fee remuneration.

Column (9) indicates that the average compensation per case is currently running about \$2,400. In terms of constant 1980 dollars (Column 10), the \$2,400 average per case is actually lower than average compensation levels in the late 60's and early 70's.

CLOSED CASES, BY TYPE OF DISPOSITION, 1960-1980

Table 2 distributes Closed Cases by three types of case dispositions-- DIRECT SETTLEMENTS, INFORMAL CASES and FORMAL CASES.

During the past 20 years, there has been a major shift from direct settlement and informal hearings to case dispositions through formal hearings. In 1960, one of three cases was settled at the formal hearing level; in 1980, 2 out of 3 cases were resolved through formal hearings.

Table 2

CLOSED CASES
BY TYPE OF DISPOSITION
1960 - 1980

YEAR (1)	NUMBER OF CLOSED CASES			% DISTRIBUTION OF CLOSED CASES			
	TOTAL (2)	DIRECT SETTLEMENT (3)	INFORMAL CASES (4)	FORMAL CASES (5)	DIRECT SETTLEMENT (6)	INFORMAL CASES (7)	FORMAL CASES (8)
	Thousands of Cases						
1960	55.7	23.9	12.4	19.4	43%	22%	35%
1961	58.0	23.1	13.2	21.7	40	23	37
1962	56.3	21.7	12.2	22.5	39	22	40
1963	56.0	20.6	11.5	23.8	37	21	43
1964	55.2	19.4	10.6	25.1	35	19	46
1965	56.4	19.5	11.1	24.8	35	20	44
1966	56.2	19.3	11.3	25.6	34	20	46
1967	58.9	14.1	14.1	30.7	24	24	52
1968	67.4	21.7	14.6	31.1	32	22	46
1969	55.5	12.3	13.3	29.8	22	24	54
1970	59.0	14.8	12.2	32.1	25	21	54
1971	68.2	15.6	15.1	37.6	23	22	55
1972	58.1	15.8	9.9	32.4	27	17	56
1973	59.1	9.0	14.3	35.9	15	24	61
1974	59.2	9.0	18.1	32.0	15	31	54
1975	54.1	9.9	8.4	35.9	18	16	66
1976	59.5	12.6	8.1	38.8	21	14	65
1977	62.3	14.5	6.8	41.0	23	11	66
1978	64.9	16.6	6.6	41.7	26	10	64
1979	68.5	17.0	6.4	45.0	25	9	66
1980	64.0	17.1	3.7	43.1	27	6	67

SOURCE: Department of Labor and Industry Annual Report, 1980.

NOTE: Due to rounding, the sum of DIRECT SETTLEMENT, INFORMAL and FORMAL CASES may not agree with the amount reported for TOTAL cases; the % distribution of closed cases may not add to 100% due to rounding. Formal cases include Second Injury Fund decisions.

COMPENSATION PAID, BY TYPE OF DISPOSITION, 1960-1980

Table 3 indicates that, during 1980, 9% of compensation paid was approved through direct settlements, 2% approved through informal hearings and 89% awarded through formal hearings.

Because monies awarded through this program are so heavily concentrated in the area of formal case hearings, a special computerized data processing system was recently developed to gather detailed information about the benefit payment and nature-of-injury characteristics of formal closed cases. Detailed data is gathered under both old law and new law experience. Chapter IV of this report presents detailed formal case characteristics data for calendar year 1980 and for the first quarter of 1981.

Table 3

COMPENSATION PAID
BY TYPE OF DISPOSITION
1960 - 1980

YEAR (1)	AMOUNT OF COMPENSATION PAID				% DISTRIBUTION OF COMPENSATION PAID		
	TOTAL (2)	DIRECT SETTLEMENT (3)	INFORMAL CASES (4)	FORMAL CASES (5)	DIRECT SETTLEMENT (6)	INFORMAL CASES (7)	FORMAL CASES (8)
	Millions of Dollars						
1960	\$ 43.9	\$ 10.2	\$ 6.5	\$ 27.2	23%	15%	62%
1961	48.2	10.3	7.4	30.5	21	15	63
1962	50.7	9.8	7.0	33.8	19	14	67
1963	56.3	10.2	7.2	39.0	18	13	69
1964	63.8	10.6	6.6	46.5	17	10	73
1965	63.5	10.8	7.3	45.5	17	11	72
1966	67.7	11.4	7.7	48.6	17	11	72
1967	75.6	6.7	9.0	59.9	9	12	79
1968	90.1	12.8	10.4	66.9	14	12	74
1969	81.8	6.7	10.4	64.7	8	13	79
1970	94.3	10.0	9.4	74.9	11	10	79
1971	111.5	10.2	10.7	90.5	9	10	81
1972	105.6	10.7	8.9	86.0	10	8	81
1973	107.2	6.3	9.0	91.9	6	8	86
1974	109.2	11.5	7.2	90.4	11	7	83
1975	119.9	8.8	6.7	104.5	7	6	87
1976	104.5	8.9	6.9	88.7	9	7	85
1977	132.9	9.7	5.9	117.3	7	4	88
1978	141.1	10.5	5.7	124.9	7	4	89
1979	148.8	12.0	4.9	131.9	8	3	89
1980	155.0	13.7	3.5	137.9	9	2	89

SOURCE: Department of Labor and Industry Annual Report, 1980.

NOTE: Due to rounding, the sum of compensation paid to DIRECT SETTLEMENT, INFORMAL and FORMAL CASES may not agree with the amount of compensation paid for TOTAL cases; the % distribution of compensation paid may not add to 100% due to rounding. Compensation paid does not include medical treatment costs.

**III. Major Provisions Of Chapter 283 Of The Laws Of 1979
(Omnibus Legislation)**

III. MAJOR PROVISIONS OF CHAPTER 283 OF THE LAWS OF 1979
(Omnibus Legislation)

The new workers' compensation law is far reaching. The major thrust of the legislation was to redefine permanent partial disability so that the number of minor permanent partial claims and awards would be reduced.

An equally important intent of the legislation was that of increasing compensation benefits to seriously injured workers. For instance, prior to 1980 the statutory scheduled loss payment for the loss of an arm was \$12,000; this scheduled loss payment was increased to \$64,634 under the new law.

The following summary of major provisions of Chapter 283 reflects these two general themes--restrictions on eligibility for permanent partial benefits; increased awards for serious injuries and wage loss.

Section 34:15-7
(Compensation by
agreement;
defenses;
burden of proof.)

Unlawful Use; Willful Failure; Recreational
Activities

Workers' compensation is essentially a no-fault social insurance program. There are some exceptions, however. Prior legislation provided that the

employer would not be held liable for injuries or death to an employee where "...the injury or death is intentionally self-inflicted, or when intoxication is the natural and proximate cause of injury..."

Chapter 283 adds two more general exceptions to the no-fault aspect of the law. The unlawful use of drugs (Controlled Dangerous Substances as defined in PL 1970, c.266-c.24:31-1 et. seq.) and the willful failure to make use of a reasonable and proper personal protective device or devices, furnished by the employer, can be used as a basis for denying benefits.

This section of the law introduced additional restrictions on employer liability. Injury or death resulting from certain work associated recreational and social activities are not compensable under the new law.

Section 34:15-8
(Election surrender
of other remedies.)

Heart Ailments; Stroke

The old law did not specifically address cardiovascular and cerebral vascular attacks, and resulting disability. A precedent case, Dwyer v. Ford Motor Co. 36NJ 487 (1962), had established a criteria for compensability of exertion to be to a "material degree beyond de minimus".

Chapter 283 requires that the burden of proof shall be upon the worker to demonstrate that the injury was work related. "...the claimant shall prove by a preponderance of the credible evidence that the injury or death was produced by the work effort or strain involving a substantial event, condition or happening in excess of the wear and tear of the claimant's daily living..."

Section 34:15-10
(Employment in
violation of law;
children.)

Cooperative Education Clarification

The workers' compensation law provides that compensation to minors, employed in violation of child labor laws, shall be double the normal compensation rate. The intent is to discourage the illegal employment of minors.

Chapter 283 specifies that "...student-learners employed in a cooperative vocational education program approved by the State Board of Education..." shall not be considered illegally employed, and shall not be subject to the double payment provisions.

Section 34:15-12
(Wage and
compensation
schedule.)

Higher Compensation Schedules; Pre-existing Conditions

Temporary Disability. Maximum benefits for wage loss were increased

from: 66 2/3 percent of the individual's prior wage up to a cap of 66 2/3 of the statewide average weekly wage,

to: 70% of the individual's prior wage up to a cap of 75% of the statewide average weekly wage.

The maximum potential duration for temporary disability benefits was increased from 300 weeks to 400 weeks.

The maximum weekly benefit increased from \$156 in 1979, to \$185 in 1980, and to \$199 in 1981.

Permanent Partial. Maximum benefits for disability, partial in character and permanent in quality, were increased

from: \$40 per week, in escalating steps,

to: a maximum of 70% of the individual's prior wage to a cap of 75% of the statewide average weekly wage.

The maximum permanent partial weekly benefit rate is payable only to individuals with serious disabilities; those with less severe permanent partial disabilities will collect only \$47 per week in permanent partial compensation benefits for the first 180 weeks. Beginning in 1982, this \$47 limit will be indexed annually in line with statewide wage inflation.

The maximum potential duration for permanent partial benefits was increased from 550 weeks to 600 weeks.

The maximum weekly benefit increased from \$40 in 1979, to \$185 in 1980, and to \$199 in 1981.

Permanent Total. Maximum benefits for disability, total in character and permanent in quality, were increased

from: 66 2/3 percent of the individual's prior wage up to a cap of 66 2/3 of the statewide average weekly wage,

to: 70% of the individual's prior wage up to a cap of 75% of the statewide average weekly wage.

The maximum weekly benefit increased from \$156 in 1979, to \$185 in 1980, and to \$199 in 1981.

The maximum remains unchanged at 450 weeks, with further payments for life, subject to periodic reconsideration and reauthorization, as under the old law.

Pre-Existing Conditions. Chapter 283 provides that the employer shall not be liable for any pre-existing disabilities..."credit shall be given the employer or the employer's insurance carrier for the previous loss of function and the burden of proof in such matters shall rest on the employer."

Under the old law, credit was given for pre-existing disabilities only where the pre-existing disability was actually compensated under the law.

Section 34:15-13
(Death, compensation for; computation and distribution.)

Dependency Benefits; Funeral Benefits

In the event of occupational related death, dependents of the deceased worker are entitled to benefits as specified by a dependency schedule in the law.

These benefits are initially payable for 450 weeks. The duration of payments may be extended, by periodic review, through the entire survivorship of the spouse, or until such surviving spouse shall remarry. The law provides additional dependency benefits for other immediate family members. Chapter 283 increased the maximum weekly dependency benefit

from: 66 2/3 of the deceased's average wage up to a cap of 66 2/3 of the statewide average weekly wage,

to: 70% of the deceased's average wage up to a cap of 75% of the statewide average weekly wage.

The maximum weekly benefit increased from \$156 in 1979 to \$185 in 1980, to \$199 in 1981.

Funeral Benefits. Chapter 283 increased funeral assistance benefits from \$750 to \$2,000.

Section 34:15-20
(Dispute; submission to bureau.)

Order Approving Settlement (OAS)

This new provision introduces a mechanism for expediting contested claims, where the "...issues involve the question of jurisdiction, liability, causal relationship or dependency of the petitioner..."

This provision permits lump-sum settlements, where both parties agree to the terms, and where a "...judge of compensation has determined that such settlement is fair and just under all the circumstances..."

Under this type of special settlement, the employer, or insurance company, pays compensation while denying

responsibility or liability for the injury; the claimant accepts compensation as a final payment and completely surrenders all future rights to compensation or other benefits arising out of such claim; "...such settlement, when so approved... shall have the force and effect of a dismissal of the claim petition and shall be final and conclusive..."

Section 34:15-30
(Occupational
diseases, compensation.)

Willful Exposure

Under the old law, occupational diseases contracted through "...willful self-exposure to a known hazard with the intention of contracting an occupational disease..." were not compensable under the law.

Chapter 283 extends this willful exposure concept to include "...willful failure to make use of a reasonable and proper guard or personal protective device furnished by the employer which has been clearly made a requirement of the employee's employment by the employer."

Section 34:15-31
(Compensable
occupation
diseases.)

Material Degree; Aging Process

This section of the new law redefines "compensable occupational disease" by inserting the words "in a material degree."

"... 'compensable occupational disease' shall include all diseases arising out of employment, which are due in a material degree to causes and conditions which are or were characteristic of or peculiar to a particular trade, occupation, process or place of employment."

This section further clarifies compensable occupational disease by mandating that "...Deterioration of a tissue, organ or part of the body in which the function of such tissue, organ or part of the body is diminished due to the natural aging process thereof is not compensable."

Section 34:15-34
(Time for claiming
compensation.)

Retroactive Filing of Claims

Generally, workers suffering occupational injury or illness, have two years within which to file claims. In cases where symptoms of the illness may have taken years, or decades, to surface, the two year limitation has been interpreted as two years from the diagnosis of the disease.

In an effort to more clearly define types of diseases where long term retroactive filing is permitted, and to exclude long term retroactive filing for other types of injury or disease, Chapter 283 defines occupational illnesses for which long term retroactive filing is permitted:

"...asbestosis, radiation poisoning, siderosis, anthracosis, silicosis, mercury poisoning, beryllium poisoning, chrome poisoning, lead poisoning or any other occupational disease having the same characteristics of the above enumerated diseases as subsequently determined by the National Institute for Occupational Safety and Health..."

Section 34:15-36
(Definitions)

Going and Coming.

Compensable disability is more restrictively defined, in terms of prior case law interpretation, regarding employer liability related to travel to and from work.

Section 34:15-36
(Definitions;...)

Permanent Partial Defined

The old law contained no statutory definition for permanent partial disability.

The new law restrictively defines permanent partial disability in terms of requiring "demonstrable objective medical

evidence" and in terms of excluding specific "...injuries such as minor lacerations, minor contusions, minor sprains, and scars which do not constitute significant permanent disfigurement, and occupational disease of a minor nature such as mild dermatitis and mild bronchitis.."

Section 34:15-36
(Definitions...)

Permanent Total Defined.

The old law contained no statutory definition for permanent total disability.

The new law states that "...'Disability permanent in quality and total in character' means a physical or neuro-psychiatric total permanent impairment caused by a compensable accident or compensable occupational disease where no fundamental or marked improvement in such condition can be reasonably expected. Factors other than physical and neuropsychiatric impairment may be considered in the determination of permanent total disability where such physical and neuropsychiatric impairments constitute at least 75% or higher of total disability."

**IV. Reporting Requirements Of Chapter 283 Of The Laws Of 1979
(Omnibus Legislation)**

IV. REPORTING REQUIREMENTS OF CHAPTER 283
OF THE LAWS OF 1979
(Omnibus Legislation)

A special data base has been developed for the express purpose of (1) evaluating the impact of the new legislation and (2) preparing a series of monthly reports.

This special data base provides a wide range of detailed information about formal closed cases. Formal closed cases--those adjudicated through the formal hearing process--accounted for 89% of all compensation paid in each of the past three years. These cases are of particular concern in evaluating the impact of the new law because both permanent partial cases and serious injury cases--the focus of the legislation--are addressed almost exclusively through the formal hearing process.

Before commenting on the highlights of the special data base, it would be useful to review the phase-in experience of the new law.

Table 4 on the following page, Formal Claims Filed, indicates that 61,000 formal claims petitions were filed during calendar year 1979--the last year of experience under the old law. In contrast, only 47,000 formal claims were filed in 1980--the first year of experience under the new law.

Table 4
FORMAL CLAIMS FILED
 JAN 1980 - MAR 1981

MONTH (1)	FORMAL CLAIMS 1979 (2)	FORMAL CLAIMS 1980 (3)	% CHANGE FROM PRIOR YEAR (4)	FORMAL CLAIMS 1981 (5)	% CHANGE FROM PRIOR YEAR (6)
JAN	4,354	4,268	- 2%	3,381	-21%
FEB	3,971	4,364	+10	3,278	-25
MAR	4,790	4,251	-11	3,660	-14
APR	4,285	3,517	-18		
MAY	4,867	3,814	-22		
JUN	4,420	4,394	- 1		
JUL	4,568	3,833	-16		
AUG	4,433	4,155	- 6		
SEP	5,055	3,970	-21		
OCT	5,258	4,228	-20		
NOV	6,248	3,059	-51		
DEC	8,724	3,381	-61		
JAN-DEC	60,973	47,234	-23		

NOTE: 49,786 formal claims were filed in 1978.

This erratic pattern can be largely explained as the result of two reactions to the new law. First, as passage of the new law, and its more restrictive provisions, was recognized as a distinct possibility throughout 1979, record numbers of workers elected to file claims quickly in order to qualify for benefits under the provisions of the old law; this factor inflated the 1979 claims rate. After the new law was approved, another atypical filing pattern emerged. Claims fell to unusually low levels because (a) some claimants who would have normally filed in 1980 had already filed in 1979 and (b) some claimants who would have normally filed in 1980 have further delayed the filing of claims, at the advice of Counsel, awaiting Appellate clarification of the new definition of permanent partial disability. This trend has continued through the first quarter of 1981.

Table 5 illustrates the old law/new law distribution of formal case closings, by month, since January 1980. During the first seven months of operation, only one new law case was adjudicated through the formal hearing process. Only 296 new law cases were settled through the formal hearing process during calendar year 1980; this represented only 1% of the workload. By March 1981, the new law percentage had increased to 6%. Preliminary data for April 1981 indicates that the new law percentage will increase to approximately 13% for that month.

The phase-in patterns of the new law ought to be kept in mind when making old law/new law comparisons. Variations in old law/new law case characteristics at this point may relate to

Table 5
CASES CLOSED
THROUGH FORMAL HEARINGS
 JAN 1980 - MAR 1981

MONTH/YEAR (1)	TOTAL (2)	OLD LAW (3)	NEW LAW (4)	% DISTRIBUTION	
				OLD LAW (5)	NEW LAW (6)
JAN 1980	3,303	3,303	0	100%	0%
FEB 1980	3,159	3,159	0	100	0
MAR 1980	4,287	4,287	0	100	0
APR 1980	3,192	3,192	0	100	0
MAY 1980	3,590	3,590	0	100	0
JUN 1980	3,791	3,790	1	100	0
JUL 1980	3,645	3,645	0	100	0
AUG 1980	1,692	1,687	5	100	0
SEP 1980	3,013	3,013	0	100	0
OCT 1980	3,784	3,715	69	98	2
NOV 1980	3,153	3,085	68	98	2
DEC 1980	3,514	3,361	153	96	4
JAN-DEC 1980	40,123	39,827	296	99	1
JAN 1981	3,103	2,972	131	96	4
FEB 1981	3,304	3,124	180	95	5
MAR 1981	4,850	4,541	309	94	6
JAN-MAR 1981	11,257	10,637	620	94	6 *

* Preliminary data indicates that the percentage of new law formal claims dispositions will increase to approximately 13% for April, 1981.

the atypical nature of new law case closures, e.g., less serious and less complex cases closed first, rather than to the underlying legislation.

The special data base for evaluating the impact of the new law consists of a series of three reports. Two of these reports deal with all formal closed cases; the other report deals exclusively with hearing loss; each of the reports provides detailed comparisons of the old and new laws.

REPORT NO. 1
SUMMARY DATA

This report provides the complete record, for a given period, regarding the number of formal cases closed, temporary (wage loss) dollars paid, permanent dollars paid, medical fees, legal fees, Order Approving Settlement dollars paid, average months to close and selected averages.

Report No. 1 on the following page, SUMMARY DATA, 1980 indicates that:

- 40,123 formal cases were closed during 1980; only 296 of those were related to the provisions of the new law.
- Temporary compensation (for wage loss) totalled \$25 million;
- Permanent compensation (for permanent partial, permanent total and death) totalled \$70 million;
- Medical fees (for doctors reports and testimony), excluding medical treatment costs, totalled \$2 million;
- Attorneys' fees totalled \$15 million.

SUMMARY DATA

1980

	TOTAL	OLD LAW	NEW LAW
Number of Cases <u>1/</u>	40,123	39,827	296
Percentage Distribution of Cases	100%	99%	1%
Temporary Compensation <u>2/</u>	\$24,835,715	\$24,735,325	\$100,390
Permanent Compensation <u>3/</u>	69,696,196	69,268,752	427,444
Medical Fees (Petitioner) <u>4/</u>	1,165,293	1,159,154	6,139
Medical Fees (Respondent) <u>4/</u>	1,060,038	1,054,111	5,927
Legal Fees (Petitioner) <u>5/</u>	7,652,341	7,619,766	32,575
Legal Fees (Respondent) <u>5/</u>	7,713,885	7,667,820	46,065
Order Approving Settlement Compensation (OAS) <u>6/</u>	19,537,992	19,335,900	202,092
Number of Cases Involving Temporary Compensation	12,255	12,154	101
Average Temporary Dollars Paid Per Temporary Dollars Case	\$ 2,027	\$ 2,035	\$ 994
Number of Cases Involving Permanent Compensation	26,812	26,625	187
Average Permanent Dollars Paid Per Permanent Dollars Case	\$ 2,600	\$ 2,602	\$ 2,286
Average Months to Close	18	18	6

- 1/ Formal Closed Cases.
- 2/ Compensation paid for wage loss, resulting from occupational illness or injury.
- 3/ Compensation paid for occupational illness or injury, of a permanent nature.
- 4/ Fees for doctors reports and testimony; does not include medical treatment costs.
- 5/ Petitioners' Attorney's Fees.
- 6/ Compromise settlements of disputed cases where a Judge of Compensation has reviewed the case and issued a special Order Approving Settlement.

-- New Jersey's Workers' Compensation Program --

SUMMARY DATA

JAN-MAR 1981

Report No. 1

	TOTAL	OLD LAW	NEW LAW
Number of Cases <u>1/</u>	11,257	10,637	620
Percentage Distribution of Cases	100%	94%	6%
Temporary Compensation <u>2/</u>	\$ 6,632,139	\$ 6,306,345	\$ 325,794
Permanent Compensation <u>3/</u>	18,144,994	17,013,650	1,131,344
Medical Fees (Petitioner) <u>4/</u>	361,350	346,222	15,128
Medical Fees (Respondent) <u>4/</u>	302,768	289,223	13,545
Legal Fees (Petitioner) <u>5/</u>	2,322,377	2,239,121	83,256
Legal Fees (Respondent) <u>5/</u>	2,084,289	1,982,472	101,817
Order Approving Settlement Compensation (OAS) <u>6/</u>	7,412,572	7,304,109	108,463
Number of Cases Involving Temporary Compensation	3,325	3,065	260
Average Temporary Dollars Paid Per Temporary Dollars Case	\$ 1,995	\$ 2,058	\$ 1,253
Number of Cases Involving Permanent Compensation	6,901	6,489	412
Average Permanent Dollars Paid Per Permanent Dollars Case	\$ 2,629	\$ 2,622	\$ 2,746
Average Months to Close	20	21	8

- 1/ Formal Closed Cases.
- 2/ Compensation paid for wage loss, resulting from occupational illness or injury.
- 3/ Compensation paid for occupational illness or injury, of a permanent nature.
- 4/ Fees for doctors reports and testimony; does not include medical treatment costs.
- 5/ Petitioners' Attorney's Fees.
- 6/ Compromise settlements of disputed cases where a Judge of Compensation has reviewed the case and issued a special Order Approving Settlement.

- Compensation payments through the Order Approving Settlement provision totalled \$20 million. Changes in this provision of the law ought to be closely monitored in the months and years ahead to evaluate its impact on aggregate costs and average duration per case.
- Average temporary dollars paid per case--\$2,027. This average is based upon a subpopulation of 12,255 cases involving the payment of temporary dollars.
- Average permanent dollars paid per case--\$2,600. This average is based upon a subpopulation of 26,812 cases involving the payment of permanent dollars.
- Old law/new law comparisons reveal that both average temporary and average permanent dollars paid per case were less under the new law than under the old law. The opposite relationship should occur, considering increases in payment schedules and the new restrictive criteria for permanent partial awards. Presumably, these abnormally low averages for 1980 reflect early settlements of less complex and less serious cases.
- The average case duration was 18 months under the old law and 6 months under the new law. This 6 month average duration reflects the phasing-in of the program; it suggests that the early experience under the provisions of the new law may be atypical and should be interpreted with caution.

REPORT NO. 2
TEMPORARY AND PERMANENT COMPENSATION,
BY NATURE OF INJURY

This report provides detailed information about (1) caseload, (2) total compensation and (3) average compensation per case, by nature of injury. It includes only those formal closed cases where either temporary compensation, permanent compensation, or both, were paid. It excludes OAS cases, dismissed cases and those that were discontinued through lack of pursuit by the petitioner. The averages, therefore, relate temporary and permanent compensation paid to the subpopulations of cases which received those compensation benefits.

Report No. 2 on the following page, TEMPORARY AND PERMANENT COMPENSATION, BY NATURE OF INJURY, 1980 (old law) indicates that:

- \$25 million of temporary compensation benefits were reported paid to 12,154 cases; the average temporary dollars paid per case was \$2,035.
- \$69 million of permanent compensation benefits was paid to 26,625 cases; the average permanent dollars paid per case was \$2,602.
- The combined \$94 million of temporary and permanent compensation benefits was paid to 26,754 cases; the average combined temporary and permanent dollars paid per case was \$3,514.
- The highest incidence of cases was "sprains". There were 6,990 compensated sprain cases in 1980; the average combined temporary and permanent compensation paid for these cases was \$3,520. 4,169 of these cases were paid temporary dollars; 6,970 of these cases were paid permanent dollars.
- The new legislation more restrictively defines compensable lacerations, contusions, sprains, heart attack and hearing loss. These types of cases (identified as cuts, bruises, sprains, heart attack and hearing loss on the table) accounted for 45% of the compensated cases and 39% of the combined temporary and permanent compensation.
- The highest average compensation per case was for "asphyxia"--\$56,699. There were 4 asphyxia cases in 1980.
- Cases identified as "multiple injuries" received \$32,000,000 in compensation; this represents more than one-third of total compensation.
- There were 254 compensable heart attack cases; \$4.5 million was paid for heart attack; the average compensation per case was \$17,775.
- There were 1,287 compensable hearing loss cases; \$1.6 million was paid for hearing loss; the average compensation per case was \$1,226. The hearing loss issue will be addressed in greater detail in the following chapter.

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

1980

(OLD LAW)

Report No. 2

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NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
AMPUTATION	108	\$ 799,080	\$7,399	88	\$ 162,061	\$1,842	108	\$ 637,019	\$5,898
ASPHYXIA	4	226,797	56,699	0	0	0	4	226,797	56,699
BURN (HEAT)	539	1,384,340	2,568	272	343,650	1,263	538	1,040,690	1,934
BURN (CHEMICAL)	258	612,371	2,373	108	108,759	1,007	257	503,612	1,960
CONCUSSION	137	416,356	3,039	50	78,425	1,569	137	337,931	2,467
CONTAGIOUS DISEASE	429	328,802	766	39	20,730	532	428	308,072	720
BRUISE	2,119	3,980,959	1,878	918	1,247,928	1,359	2,108	2,733,031	1,297
CUT	1,290	2,333,898	1,809	632	672,111	1,063	1,287	1,661,787	1,291
DERMATITIS	171	269,587	1,576	44	62,625	1,423	169	206,962	1,225
DISLOCATION	79	358,056	4,532	56	115,792	2,068	79	242,264	3,067
ELECTRIC SHOCK	15	103,147	6,876	6	4,397	733	15	98,750	6,583
FRACTURE	1,750	6,310,730	3,606	1,203	2,298,590	1,911	1,744	4,012,140	2,301
FREEZING	9	27,961	3,107	5	8,231	1,646	9	19,730	2,192
HEARING LOSS	1,287	1,578,169	1,226	4	2,769	692	1,287	1,575,400	1,224
HEAT STROKE	1	2,750	2,750	0	0	0	1	2,750	2,750

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

1980

(OLD LAW)

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NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
HERNIA	115	\$ 243,801	\$2,120	88	\$ 116,201	\$1,320	86	\$ 127,600	\$1,484
INFLAMMATION	400	1,069,852	2,675	206	381,985	1,854	399	687,867	1,724
POISONING	2,719	5,931,017	2,181	69	98,990	1,435	2,718	5,832,027	2,146
PNEUMOCONIOSIS	61	458,388	7,515	4	16,095	4,024	60	442,293	7,372
RADIATION	9	10,426	1,158	3	1,406	469	9	9,020	1,002
SCRATCHES	141	126,999	901	25	12,954	518	138	114,045	826
SPRAINS	6,990	24,604,886	3,520	4,169	8,958,891	2,149	6,970	15,645,995	2,245
HEMMORHOIDS	1	660	660	0	0	0	1	660	660
MULTIPLE INJURIES	6,396	32,367,706	5,061	3,810	9,190,164	2,412	6,378	23,177,542	3,634
ATMOSPHERIC PRESSURE	1	4,450	4,450	1	1,150	1,150	1	3,300	3,300
CEREBROVASCULAR	13	318,099	24,469	6	21,946	3,658	13	296,153	22,781
COMPLICATIONS-MED CARE	11	36,948	3,359	7	12,418	1,774	11	24,530	2,230
EYE DISEASES	52	552,558	10,626	39	112,783	2,892	52	439,775	8,457
MENTAL DISORDERS	26	167,969	6,460	11	12,249	1,114	26	155,720	5,989
NEOPLASM	13	482,963	37,151	3	7,043	2,348	12	475,920	39,660

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

1980

(NEW LAW)

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NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
50 HERNIA	0	\$ 0	\$ 0	0	\$ 0	\$ 0	0	\$ 0	\$ 0
INFLAMMATION	0	0	0	0	0	0	0	0	0
POISONING	9	14,254	1,584	0	0	0	9	14,254	1,584
PNEUMOCONIOSIS	0	0	0	0	0	0	0	0	0
RADIATION	0	0	0	0	0	0	0	0	0
SCRATCHES	0	0	0	0	0	0	0	0	0
SPRAINS	81	176,653	2,181	52	49,876	959	79	126,777	1,605
HEMMORRHOIDS	0	0	0	0	0	0	0	0	0
MULTIPLE INJURIES	27	210,205	7,785	18	19,306	1,073	27	190,899	7,070
ATMOSPHERIC PRESSURE	0	0	0	0	0	0	0	0	0
CEREBROVASCULAR	1	6,240	6,240	1	4,830	4,830	1	1,410	1,410
COMPLICATIONS-MED CARE	0	0	0	0	0	0	0	0	0
EYE DISEASES	0	0	0	0	0	0	0	0	0
MENTAL DISORDERS	0	0	0	0	0	0	0	0	0
NEOPLASM	0	0	0	0	0	0	0	0	0

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

1980

(NEW LAW)

Report No. 2

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NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
51 NERVOUS SYSTEM	1	\$ 2,270	\$2,270	0	\$ 0	\$ 0	1	\$ 2,270	\$2,270
RESPIRATORY SYSTEM	12	23,675	1,973	1	1,770	1,770	12	21,905	1,825
OCCUPATIONAL DISEASE	2	2,750	1,375	0	0	0	2	2,750	1,375
HEART ATTACK	0	0	0	0	0	0	0	0	0
UNCLASSIFIED & MISC	4	9,323	7,850	4	4,775	3,987	3	4,548	4,034
TOTAL	190	527,834	2,778	101	100,390	994	187	427,444	2,286

1/ The sum of cases for which temporary compensation (for wage loss) and/or permanent compensation (for occupational illness or injury of a permanent nature) was paid.

2/ The sum of cases for which temporary compensation was paid.

3/ The sum of cases for which permanent compensation was paid.

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

JAN-MAR 1981

(OLD LAW)

Report No. 2

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NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
AMPUTATION	32	\$ 237,079	\$ 7,409	29	\$ 89,753	\$3,095	32	\$ 147,326	\$ 4,604
ASPHYXIA	0	0	0	0	0	0	0	0	0
BURN (HEAT)	115	293,836	2,555	51	71,955	1,411	114	221,881	1,946
BURN (CHEMICAL)	55	291,823	5,306	33	75,572	2,290	55	216,251	3,932
CONCUSSION	47	91,147	1,939	10	13,007	1,301	47	78,140	1,663
CONTAGIOUS DISEASE	132	85,814	650	10	3,394	339	132	82,420	624
BRUISE	608	1,175,038	1,933	258	363,717	1,410	605	811,321	1,341
CUT	341	592,769	1,738	163	184,642	1,133	340	408,127	1,200
DERMATITIS	35	67,079	1,917	13	20,325	1,563	35	46,754	1,336
DISLOCATION	34	144,127	4,239	24	45,762	1,907	34	98,365	2,893
ELECTRIC SHOCK	3	74,176	24,725	2	773	387	3	73,403	24,468
FRACTURE	448	1,744,541	3,894	295	643,754	2,182	447	1,100,787	2,463
FREEZING	1	3,814	3,814	1	1,114	1,114	1	2,700	2,700
HEARING LOSS	209	268,841	1,286	1	1,299	1,299	209	267,542	1,280
HEAT STROKE	0	0	0	0	0	0	0	0	0

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

JAN-MAR 1981

(OLD LAW)

Report No. 2

Page 2 of 3

NATURE OF INJURY (1)	COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/			TEMPORARY COMPENSATION CASES 2/			PERMANENT COMPENSATION CASES 3/		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
HERNIA	24	\$ 52,575	\$ 2,191	16	\$ 26,055	\$1,628	19	\$ 26,520	\$ 1,396
INFLAMMATION	50	160,103	3,202	21	31,477	1,499	50	128,626	2,573
POISONING	477	1,279,434	2,682	17	27,809	1,636	474	1,251,625	2,641
PNEUMOCONIOSIS	12	43,550	3,629	0	0	0	12	43,550	3,629
RADIATION	2	1,760	880	0	0	0	2	1,760	880
SCRATCHES	27	41,714	1,545	8	5,779	722	27	35,935	1,331
SPRAINS	1,901	6,911,347	3,636	1,132	2,365,201	2,089	1,893	4,546,146	2,402
HEMMORRHOIDS	0	0	0	0	0	0	0	0	0
MULTIPLE INJURIES	1,558	7,585,294	4,869	918	2,173,462	2,368	1,556	5,411,832	3,478
ATMOSPHERIC PRESSURE	0	0	0	0	0	0	0	0	0
CEREBROVASCULAR	3	14,025	4,675	0	0	0	3	14,025	4,675
COMPLICATIONS-MED CARE	1	2,967	2,967	1	1,097	1,097	1	1,870	1,870
EYE DISEASES	7	84,041	12,006	5	11,141	2,228	7	72,900	10,414
MENTAL DISORDERS	11	17,355	1,578	4	745	186	11	16,610	1,510
NEOPLASM	6	166,651	27,775	1	1,682	1,682	6	164,969	27,495

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

JAN-MAR 1981

(NEW LAW)

Report No. 2
Page 2 of 3

NATURE OF INJURY (1)	<u>COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/</u>			<u>TEMPORARY COMPENSATION CASES 2/</u>			<u>PERMANENT COMPENSATION CASES 3/</u>		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
HERNIA	3	\$ 5,383	\$ 1,794	2	\$ 2,563	\$ 1,282	2	\$ 2,820	\$ 1,410
INFLAMMATION	1	2,670	2,670	1	1,189	1,189	1	1,481	1,481
POISONING	20	46,041	2,302	0	0	0	20	46,041	2,302
PNEUMOCONIOSIS	4	87,057	21,764	0	0	0	4	87,057	21,764
RADIATION	0	0	0	0	0	0	0	0	0
SCRATCHES	3	3,847	1,282	1	1,450	1,450	3	2,397	799
SPRAINS	140	399,200	2,851	102	136,250	1,336	138	262,950	1,905
HEMMORRHOIDS	0	0	0	0	0	0	0	0	0
MULTIPLE INJURIES	85	434,647	5,113	61	81,256	1,332	85	353,391	4,158
ATMOSPHERIC PRESSURE	0	0	0	0	0	0	0	0	0
CEREBROVASCULAR	0	0	0	0	0	0	0	0	0
COMPLICATIONS-MED CARE	0	0	0	0	0	0	0	0	0
EYE DISEASES	0	0	0	0	0	0	0	0	0
MENTAL DISORDERS	1	564	564	0	0	0	1	564	564
NEOPLASM	0	0	0	0	0	0	0	0	0

-- New Jersey's Workers' Compensation Program --

TEMPORARY AND PERMANENT COMPENSATION

BY NATURE OF INJURY

FORMAL CASES

JAN-MAR 1981

(NEW LAW)

Report No. 2
Page 3 of 3

NATURE OF INJURY (1)	<u>COMBINED TEMPORARY AND PERMANENT COMPENSATION CASES 1/</u>			<u>TEMPORARY COMPENSATION CASES 2/</u>			<u>PERMANENT COMPENSATION CASES 3/</u>		
	CASES (2)	COMPENSATION (3)	AVERAGE DOLLARS PER CASE (4)	CASES (5)	COMPENSATION (6)	AVERAGE TEMP. DOLLARS PER CASE (7)	CASES (8)	COMPENSATION (9)	AVERAGE PERM. DOLLARS PER CASE (10)
NERVOUS SYSTEM	1	\$ 2,601	\$ 2,601	1	\$ 768	\$ 768	1	\$ 1,833	\$ 1,833
RESPIRATORY SYSTEM	6	35,364	5,894	1	1,480	1,480	6	33,884	5,647
OCCUPATIONAL DISEASE	5	24,790	4,958	0	0	0	5	24,790	4,958
HEART ATTACK	1	1,602	1,602	0	0	0	1	1,602	1,602
UNCLASSIFIED & MISC.	4	63,334	15,834	2	3,684	1,842	3	59,650	19,883
TOTAL	418	1,457,138	3,486	260	325,794	1,253	412	1,131,344	2,746

1/ The sum of cases for which temporary compensation (for wage loss) and/or permanent compensation (for occupational illness or injury of a permanent nature) was paid.

2/ The sum of cases for which temporary compensation was paid.

3/ The sum of cases for which permanent compensation was paid.

It is again emphasized that old law/new law comparisons at this point should be interpreted with caution; they cannot be used to draw any firm conclusions; only 1% of 1980 formal cases were settled under the provisions of the new law; only 6% of 1st quarter 1981 formal cases were settled under the provisions of the new law.

The data format outlined on the previous pages will permit detailed evaluation of the impact of the new legislation as a greater percentage of the workload falls under the provisions of the new law in the months and years ahead. Because of the complex nature and extended medical treatment of more serious disabilities, many new law adjudications have been deferred and are not as yet included in the data bank of experience under the new law.

Finally, there are three additional issues which should also be addressed in the future when more new law experience and data become available: they are (1) dismissals, (2) total disability and (3) the Second Injury Fund.

Dismissals. It is not yet clear what impact the new law will have upon the dismissals of cases. This is a complex area of the program to accurately evaluate because a single affected worker may file multiple claims e.g., 10 claims against 10 different employers. One employer may be held liable, with the other nine cases dismissed. Dismissals, therefore, do not reflect the number of individuals denied benefits.

The new law may eventually influence dismissals in several ways; as precedent case experience emerges, petitioners' attorneys may be encouraged/discouraged from filing petitions as they had in the past; likewise, Judges of Compensation may also adopt new standards and guidelines for dismissing cases as a body of precedent cases becomes clearly defined at some future time.

Total Disability. Awards for total disability will be somewhat more restricted under the new law.

First, the new statute will restrict the application of the so called "odd lot" doctrine in making determinations of permanent total disability. This doctrine has been expanded in recent years by the Appellate Courts to the point where workers with physiological disabilities of 25 percent or even less were declared to be totally disabled because the disability coupled with a background of illiteracy, language barrier or lack of special skills rendered the worker unemployable. Within the guidelines of this doctrine, once the worker has been shown to be within the odd lot category, the burden is upon the employer to prove the availability of steady work to the claimant. Under the new provisions of the law, factors other than the work related physical or mental impairment may only be considered in the determination of permanent total disability where such physical or neuropsychiatric impairments constitute at least 75 percent or higher of total disability.

Secondly, fewer permanent total awards may be granted in the future because the new law provides that, pre-existing disabilities, whether related to prior occupational or non-occupational causes, will not be considered as factors contributing to total disability. Under the old law, employers were exempted from liability only where the pre-existing disability, contributing to permanent total disability, was related to a prior workers' compensation claim. Pre-existing disabilities, contributing to total permanent disability, for which employers may be exempted, will fall within the jurisdiction of the Second Injury Fund in the future. No impact of this provision has yet been discerned. However, as more permanent total cases are adjudicated in the future, Second Injury Fund experience should be carefully monitored to evaluate the overall cost impact of the new legislation.

Report No. 3 of the special workers' compensation data base, HEARING LOSS DATA, is included in Chapter V of this report.

**V. Major Provisions And Reporting Requirements
Of Chapter 285 Of The Laws Of 1979
(Hearing Loss Legislation)**

V. MAJOR PROVISIONS AND REPORTING REQUIREMENTS OF CHAPTER 285
OF THE LAWS OF 1979
(Hearing Loss Legislation)

BRIEF HISTORY OF OCCUPATIONAL HEARING LOSS

Occupational hearing loss was not recognized as a compensable disability until the workers' compensation law was amended in 1949 to broadly include all occupational diseases. Prior to that legislation, only specified occupational diseases were compensable under the workers' compensation law.

Over the years, precedent decisions have guided Compensation Judges in determining the degree of hearing loss disability and corresponding compensation awards. No guidelines on determining the degree of hearing loss or the amount of compensation for hearing loss were ever included in the law. Compensation Judges followed a general philosophy of treating each worker uniquely and of attempting to measure disability by its impact upon each individual. Hearing loss measurement standards and procedures adopted by the American Medical Association have been heavily relied upon in determining the degree of hearing loss disability as a basis for compensation awards.

HEARING LOSS LEGISLATION

Chapter 285 of the Laws of 1979 specifically addresses the hearing loss issue. The Joint Committee Statement on this

legislation (See Appendix C.) noted that... "The purpose of this legislation is to encourage prevention of occupational hearing impairment insofar as possible and to provide proper compensation when it does occur. It simplifies and standardizes the method of determining the percent of hearing disability and increases the amount of compensation for substantial hearing losses, minimizing or excluding compensation to those with a lesser degree of hearing impairment. It should also make hearing loss of greater concern to management and labor."

Generally, the legislation (1) defines compensable hearing loss and (2) prescribes compensation amounts for total and partial hearing loss. The following summary of major provisions of Chapter 285 reflects these two general themes:

Section 34:15-35.11
(Definitions)

Definitions

Six hearing loss terms are defined-- noise induced occupational hearing loss, sensorineural hearing loss, prolonged exposure, habitual exposure, hazardous noise and hearing threshold level.

Section 34:15-35.12
(Degree of hearing loss)

Degree of Hearing Loss;
Determination of Degree

A specific formula for determining the degree of hearing loss is outlined... three frequencies are used, 1,000, 2,000, and 3,000 Hertz.

34:15-35.16
(Hearing tests)

Hearing Tests, Instruments Test Conditions

The quality and calibration of testing instruments is prescribed... "to measure permanent hearing loss, hearing tests shall be performed after at least 16 hours absence from exposure to hazardous noise."

34:15-35.17
(Audiometric technician)

Audiometric Technician, Audiologic evaluation

"All hearing tests shall be performed by a person at the level of a certified audiometric technician or above."

34:15-35.18
(Compensation amount)

Compensation Amount

"There shall be payable for total hearing loss 200 weeks of compensation, Partial disability compensation shall be paid for such periods as are proportionate to the relation which the calculated percentage loss bears to 100% hearing loss and shall be paid at the weekly compensation rate provided in RS 34:15-12c. or any amendments thereto."

34:15-35.21
(Award; use of hearing aids)

Award, Use of Hearing Aid

No reduction in award for hearing loss shall be made if the ability of the employee to understand speech is improved by the use of a hearing aid.

34:15-35.22
(Failure to use protective devices)

Failure To Use Protective Devices, Compensation For Hearing Loss

"No compensation shall be payable for loss of hearing caused by hazardous noise"

after the effective date of this act if an employer can properly document that despite repeated warnings, an employee willfully fails to properly and effectively utilize suitable protective device or devices provided by the employer capable of diminishing loss of hearing due to occupational exposure to hazardous noise."

34:15-35.24
(Effective date
of act)

Effective Date Of Act

"This act shall take effect on the sixtieth day after its enactment..."

REPORTING REQUIREMENTS OF CHAPTER 285

Report No. 3 on the following page, HEARING LOSS DATA, 1980,

indicates that:

- 1,315 hearing loss cases were closed in 1980; only 10 were closed under provisions of the new law.
- Permanent compensation totalled \$1,589,550.
- Medical fees (for doctors reports and testimony) excluding medical treatment costs, totalled \$63,057.
- Attorneys' fees totalled \$301,214.
- Average permanent dollars paid per case was \$1,226. This average is based on the 1,297 cases involving permanent dollars.
- The average permanent compensation per case, \$1,226, translates into an average impairment determination of 15% binaural hearing loss.
- The average case duration was 16 months under the old law and 7 months under the new law.

New Jersey's Workers' Compensation Program

HEARING LOSS DATA

1980

	TOTAL	OLD LAW	NEW LAW
Number of Cases <u>1/</u>	1,315	1,305	10
Percentage Distribution of Cases	100%	99%	1%
Temporary Compensation <u>2/</u>	\$3,260	\$2,769	\$491
Permanent Compensation <u>2/</u>	1,589,550	1,575,400	14,150
Medical Fees (Petitioner) <u>4/</u>	29,995	29,733	262
Medical Fees (Respondent) <u>4/</u>	33,062	32,799	263
Legal Fees (Petitioner) <u>5/</u>	131,330	130,215	1,115
Legal Fees (Respondent) <u>5/</u>	169,884	168,369	1,515
Order Approving Settlement Compensation (OAS) <u>6/</u>	34,580	34,580	0
Number of Cases Involving Temporary Compensation	5	4	1
Average Temporary Dollars Paid Per Temporary Dollars Case	\$652	\$692	\$491
Number of Cases Involving Permanent Compensation	1,297	1,287	10
Average Permanent Dollars Paid Per Permanent Dollars Case	\$1,226	\$1,224	\$1,415
Average Months to Close	16	16	7

- 1/ Formal Closed Cases.
- 2/ Compensation paid for wage loss, resulting from occupational illness or injury.
- 3/ Compensation paid for occupational illness or injury, of a permanent nature.
- 4/ Fees for doctors reports and testimony; does not include medical treatment costs.
- 5/ Petitioners' Attorney's Fees.
- 6/ Compromise settlements of disputed cases where a Judge of Compensation has reviewed the case and issued a special Order Approving Settlement.

HEARING LOSS DATA

JAN-MAR 1981

Report No. 3

	TOTAL	OLD LAW	NEW LAW
Number of Cases <u>1/</u>	376	359	17
Percentage Distribution of Cases	100%	95%	5%
Temporary Compensation <u>2/</u>	\$ 1,299	\$ 1,299	0
Permanent Compensation <u>3/</u>	281,926	267,542	\$14,384
Medical Fees (Petitioner) <u>4/</u>	6,459	6,207	252
Medical Fees (Respondent) <u>4/</u>	5,741	5,488	253
Legal Fees (Petitioner) <u>5/</u>	26,725	25,605	1,120
Legal Fees (Respondent) <u>5/</u>	30,593	29,068	1,525
Order Approving Settlement Compensation (OAS) <u>6/</u>	28,750	28,750	0
Number of Cases Involving Temporary Compensation	1	1	0
Average Temporary Dollars Paid Per Temporary Dollars Case	\$ 1,299	\$ 1,299	\$ 0
Number of Cases Involving Permanent Compensation	218	209	9
Average Permanent Dollars Paid Per Permanent Dollars Case	\$ 1,293	\$ 1,280	\$ 1,598
Average Months to Close	21	22	10

1/ Formal Closed Cases.

2/ Compensation paid for wage loss, resulting from occupational illness or injury.

3/ Compensation paid for occupational illness or injury, of a permanent nature.

4/ Fees for doctors reports and testimony; does not include medical treatment costs.

5/ Petitioners' Attorney's Fees.

6/ Compromise settlements of disputed cases where a Judge of Compensation has reviewed the case and issued a special Order Approving Settlement.

VI. WORKERS' COMPENSATION RESEARCH AND
EVALUATION IN THE FUTURE

The Department of Labor and Industry will continue to monitor workers' compensation claims and benefit trends on a monthly basis.

In addition to this continuous monitoring activity, the Department of Labor and Industry has initiated several additional data collection and evaluation projects.

These additional projects are aimed at (1) enabling a more thorough evaluation of the impact of the new law and (2) establishing a comprehensive data base for better informed management and improved research and evaluation in the years, and decades, ahead.

Five special projects have been initiated; they include:

(1) 1979 Data Base

To date, the special workers' compensation data base for evaluating Chapter 283 has consisted of formal cases which were closed as of January 1980, and after.

In addition to this data collection effort, a special project to compile as much data as possible for all formal case closures during calendar year 1979 is also being undertaken.

This detailed accounting of 1979 experience will offer an added dimension to the final analysis. Many of the statistical characteristics observed through the special workers' compensation data base can be traced back through calendar year 1979--the last complete year of program experience under the provisions of the old law.

(2) Severity of Disability

A percentage distribution of formal permanent partial cases by "severity of disability" could offer critical information for a more objective evaluation of the impact of the new law. For instance, a major goal of the legislation was to reduce the number of minor permanent partial awards. Two general trends should result:

1. The permanent partial award rate (awards as a percentage of labor force) should decline; and
2. Future permanent partial awards should involve a lesser concentration of awards for minor injuries and a higher concentration of awards for more serious injuries.

A percentage distribution of permanent partial award cases, by "severity of disability", would clearly illustrate the composition of the workload, and changes in the composition of the workload from year to year.

Computer programming design work for this project has begun. This project will be completed prior to July 1, 1982.

(3) Direct Settlements and Informals

It is not yet clear what overall impact the new law will have in terms of litigation and the pattern of case dispositions.

It is possible that the more restrictive guidelines for defining compensable disability could result in a measurable shift of the case-workload from formal dispositions to informal, direct settlement and OAS (order approving settlement) dispositions, i.e., if an injured worker's case is perceived as a "gray area" case, the worker may be more inclined to accept a direct, an informal, or an OAS settlement, rather than risk a complete dismissal of the case at a formal hearing.

Because of limited funding, only the formal case record has been computerized thus far. However, the Department of Labor and Industry is currently exploring the feasibility and costs of expanding the computerized data base to provide a detailed accounting of informal and direct settlement case dispositions.

(4) Supplementary Data System (SDS)

The New Jersey Department of Labor and Industry has cooperated with the U.S. Bureau of Labor Statistics

in an industrial accident statistical reporting program for several years.

The primary orientation of this comprehensive reporting program is toward improving health and safety in the workplace. Uses of the data include: architectural uses for designing safer work environments; engineering uses for designing safer equipment and tools; management and union uses for developing safety training programs; industry association uses for identifying problem areas within an industry; a safety compliance officer at a plant site can compare his firm's pattern of injury and illness experience to the pattern for the industry as a whole.

Prior to 1981, detailed data on industrial injuries and illnesses were evaluated only in terms of initial accident reports. Detailed data is available, back to 1973, regarding TYPE OF ACCIDENT, SOURCE OF INJURY, NATURE OF INJURY, AND PART OF BODY.

Beginning in January 1981, the Supplementary Data System (SDS) was expanded. Detailed data is now being gathered as to the final dispositions of workers' compensation claims. Funding for this program is 50% federal, 50% state. It is anticipated that all of the data now generated through the special workers' compensation data base will eventually be provided through the more comprehensive federal/state Supplementary Data System.

(5) Workers' Compensation Records Committee

An already functioning Workers' Compensation Records Committee, consisting of Department of Labor and Industry administrators, statisticians and data processing experts, will continue to develop long range plans for computerization of workers' compensation records. One of the priority responsibilities of this committee is to assure that the Supplementary Data System will provide comprehensive information for the continuing evaluation of the new workers' compensation law.

In summary:

- Formal new law cases, through March 1981, represent too small of a sample for meaningful evaluation of the impact of Chapters 283 and 285. Formal new law cases which have been processed to date appear to be atypical; many of the more serious cases are still undergoing medical treatment and have not yet been assigned formal case hearing dates.
- The Department of Labor and Industry will continue to closely monitor workers' compensation case experience.
- A comprehensive data collection and evaluation program for a thorough study of the new law is set in place.
- Several additional data collection and evaluation projects are planned.
- A follow-up report, evaluating the impact of Chapters 283 and 285 of the laws of 1979 is planned for July 1, 1982.

Appendix A

APPENDIX A

GLOSSARY

There are three major methods for settling workers' compensation cases: direct settlements; informal hearings; and formal hearings.

DIRECT SETTLEMENT

A method of compensating a worker for an occupational injury or disease; a voluntary method.

The employer, or the employer's insurance carrier, may make a voluntary direct payment to the worker (or to dependents of the worker, in death cases). The Division of Workers' Compensation reviews all direct settlement actions.

Direct settlements are not final and binding.

INFORMAL HEARING

A method of compensating a worker for an occupational injury or disease; a mediation method.

Either party, or the Division, may request an informal hearing before a referee at which time the injured worker, his attorney if any, a representative of the employer, or carrier, and medical reports are furnished to the referee who makes his recommendation as to the fair amount of compensation due. Either party, however, whether worker or employer (or the latter's representative) has the right to reject such recommendation, with the normal consequence thereof being the filing of a petition for a formal hearing.

Informal Hearing awards are not final and binding.

FORMAL HEARING

The method of resolving disputes under the Workers' Compensation Act.

The injured worker may file a claim petition for a formal hearing, in which case the matter is listed for a pre-trial conference and tried before a judge of compensation. The parties are represented by attorneys, a stenographic record being made of the proceeding, including the testimony of expert and other witnesses.

Final hearing judgments are binding on the parties, subject to appellate review in the Appellate Division of the Superior Court.

Order Approving Settlement (OAS)

A special category of settlement which can be attained through the formal hearing process. Under the old law (NJSA 34:15-22), OAS settlements were not final and binding. A new type of OAS settlement was introduced by the new law (NJSA 34:15-20). Under this provision, the parties may agree to a special lump sum compromise settlement if questions of jurisdiction, liability, causal relationship or dependency of the petitioner are at issue. The employer, or the insurance carrier, pays compensation while denying responsibility or liability for the injury; the claimant accepts compensation as a final payment and completely surrenders all rights to any future claims or compensation, related to the case.

OAS settlements under section 34:15-20 of the law are final and binding, upon approval of a Judge of Compensation.

Major types of compensable disability under the workers' compensation law include temporary disability, permanent partial disability and permanent total disability.

TEMPORARY DISABILITY

Temporary disability includes all types of disability, regardless of degree of severity, which prevent a worker from performing the duties of one's normal job.

Temporary disability benefits under the law are wage loss benefits. They are payable to a maximum of 400 weeks.

PERMANENT PARTIAL DISABILITY

Disability which is "permanent in quality and partial in character."

Section 34:15-36 of the law defines permanent partial disability as..."a permanent impairment caused by a compensable accident or a compensable occupational disease, based upon demonstrable objective medical evidence, which restricts the function of the body or of its members or organs; included in the criteria which shall be considered shall be whether there has been a lessening to a material degree of an employee's working ability."

Permanent partial disability includes those injuries, or diseases, which leave a mark of poorer health, loss of physical function, etc., which is permanent, but not so severe that the worker cannot engage in productive employment. Special benefits, above and beyond temporary disability benefits, are paid to workers who have incurred permanent partial disabilities. They are payable to a maximum of 600 weeks.

PERMANENT TOTAL DISABILITY

Disability which is "permanent in quality and total in character."

Permanent total disability includes all serious injuries, or diseases, which are so disabling that the individual cannot engage in productive employment. Special benefits, above and beyond temporary disability benefits are paid to workers who have incurred permanent total disability. They are payable to a maximum of 450 weeks. At the end of 450 weeks the case is reviewed to ascertain, disability status, rehabilitation progress and work potential of the individual. The award and review process is normally continued through the lifetime of the totally disabled individual.

Appendix B

JOINT SENATE/ASSEMBLY COMMITTEE STATEMENT
ON S.802 AND A.840
(Omnibus Workers' Compensation Legislation)

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE

JOINT STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, No. 802
and
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 840

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 1979

This bill is a revision of New Jersey's Workers' Compensation Law and would make available additional dollars for benefits to seriously disabled workers while eliminating, clarifying or tightening awards of compensation based upon minor permanent partial disabilities not related to the employment.

The bill would put significantly more money into the hands of the more seriously injured workers while providing genuine reform and meaningful cost containment for New Jersey employers from unjustified workers' compensation costs that are presently among the highest in the nation.

This legislation will increase the current maximum \$40.00 per week permanent partial disability rate to maximum weekly rates ranging up to 75% of the statewide average weekly wage based upon the degree of disability awarded. It would also increase the current maximum rate established for temporary disability, permanent total disability and dependency claims from 66 $\frac{2}{3}$ % of the statewide average weekly wage to 75% of the statewide average weekly wage. Calculated on the basis of the statewide average weekly wage used to determine 1979 awards, maximum awards to workers for work-related amputations would increase by approximately these amounts: arm—\$12,000.00 to \$55,340.00; leg—\$11,000.00 to \$52,825.00; hand—\$9,200.00 to \$33,440.00; and foot—\$8,000.00 to \$28,100.00. Since these awards are based on a percentage

of the statewide average weekly wage, they will increase as the average wage increases. New Jersey's rank among the 48 contiguous states for these maximum amputation awards would improve as follows: arm, 47th to 6th; leg, 47th to 5th; hand, 47th to 13th; and foot, 46th to 13th. The maximum duration and benefit amounts for work-connected permanent partial disability would increase from the current 550 weeks at \$40.00 per week (\$22,000.00) to a new maximum of 600 weeks at 75% of the statewide average weekly wage or \$176.00 per week in 1979 (about \$105,000.00). Burial benefits for work-related deaths would increase from \$750.00 to \$2,000.00.

This legislation would benefit employers by: (1) allowing credits for pre-existing disabilities to employers in the determination of awards for permanent partial and permanent total disability claims; (2) countering the far-reaching effects of *Dwyer v. Ford* in cardiac claims by requiring that a petitioner prove that the injury or death involved substantial effort or strain which was in excess of the rigors of the claimant's daily living and that the cause of the injury or death was job-related in a material degree; (3) defining permanent partial disability as a work-related injury or disease, demonstrated by objective medical evidence and diminution of the claimant's work ability; objective medical evidence is understood to mean evidence exceeding the subjective statement of the petitioner; (4) restricting the "odd lot" doctrine by a redefinition of permanent total disability; (5) clarifying the effect of the decision in *Brown v. General Aniline* by permitting compensation judges to enter an award approving settlement in matters where causal relationship, jurisdiction, dependency or liability are in issue, resulting in the payment of a lump sum having the effect of a dismissal of the petition and a complete surrender of any future right to compensation or other benefits arising out of that claim; (6) declaring injuries sustained during recreational or social activities sponsored by the employer to be noncompensable unless such activities are a regular part of the employment; (7) excluding from compensability degenerative changes due to the natural aging process and limiting compensation for occupational diseases to those which are characteristic of and peculiar to a particular employment; (8) establishing relief from the far-reaching effect of the "Going and Coming Rule" decisions by defining and limiting the scope of employment; and (9) precluding retroactive application of the Statute of Limitations to occupational disease claims except in specific enumerated cases involving latent manifestation.

The bill would limit the base upon which to determine attorney fees, to be paid by the worker or his dependents and by the employer, to the amount awarded beyond an employer's offer, providing that offer is made within designated time frames.

Although this bill would be effective immediately, the provisions of the bill will apply only to accidents and occupational disease exposures which occur on or after January 1, 1980, and would not be applied retroactively to accidents or occupational diseases occurring prior to January 1, 1980, except in cases where claim is made for an occupational disease characterized by latent manifestation as set forth in R. S. 34:15-34.

This legislation also requires additional reporting by the Commissioner of Labor and Industry, including a detailed analysis to the responsible legislative committees on the effect of these changes after 18 months of experience. The commissioner would also prepare and make available to interested parties a monthly analysis of all claims filed and settled in the State.

On the recommendation of the Commission on Sex Discrimination in the Statutes, and based on the New Jersey Supreme Court's decision in *Tamarchio v. Township of Greenwich*, 75 N. J. 62 (1977), the bill would require that widowers, like widows, receive an automatic presumption of dependency. Administratively, the Division of Workers' Compensation is already conforming to the court's decision.

The Senate Labor, Industry and Professions Committee and the Assembly Labor Committee expressed their feeling that rehabilitation is a priority issue which must be addressed within the next 2 years. The statistics gathered by the Department of Labor and Industry in the first 18 months of experience with this bill will hopefully provide the basis for an extensive review of rehabilitation for disabled workers in New Jersey.

Appendix C

JOINT SENATE/ASSEMBLY COMMITTEE STATEMENT
ON S.3362 AND A.3071
(Hearing Loss Legislation)

SENATE LABOR, INDUSTRY AND
PROFESSIONS COMMITTEE
AND ASSEMBLY LABOR COMMITTEE

JOINT STATEMENT TO

SENATE, No. 3362

and

ASSEMBLY, No. 3071

with Senate committee amendments and

Assembly committee amendments

STATE OF NEW JERSEY

DATED: NOVEMBER 13, 1979

New Jersey is one of the few remaining states that has no specific legislation or guidelines for compensating employees for occupational hearing loss. This has created considerable confusion and wide disparity in awards.

The purpose of this legislation is to encourage prevention of occupational hearing impairment insofar as possible and to provide proper compensation when it does occur. It simplifies and standardizes the method of determining the percent of hearing disability and increases the amount of compensation for substantial hearing losses, minimizing or excluding compensation to those with a lesser degree of hearing impairment. It should also make hearing loss of greater concern to management and labor.

Occupational hearing loss is a disease that damages only the nerve of hearing in the inner ear. It does not damage the outer ear or the middle ear. It takes a long time for occupational hearing loss to develop since the ear has excellent recuperative qualities and can withstand a great deal of exposure to loud noises before it shows permanent damage. In the bill, the term "habitual" is used in order to incorporate the concept of day in and day out exposure rather than an occasional one.

Exposure to excessive occupational noise never produces sudden deafness. When deafness due to noise occurs suddenly in either one or both ears it is most always the result of an accident or explosion and it is called acoustic trauma, not occupational hearing loss. Such a condition is not compensated for in this legislation but falls under the present provisions of the workers' compensation act for accidental injuries.

Occupational hearing loss, like most other diseases, has certain discernible characteristics. For instance, the hearing impairment occurs gradually over a period of years and, in most cases, it affects both ears equally or almost equally. A substantial hearing impairment in one ear and none in the other is ordinarily not due to industrial noise exposure. One-sided impairment can be caused by disease or damage in the outer or middle ear and is called a conductive hearing loss. There can also be a one-sided impairment which is a sensorineural hearing loss, but which results from viral infections, drugs, vascular disorders and numerous factors other than noise.

Industrial noises affect a certain range of frequencies (pitch) in the ear much earlier than they do other frequencies. For instance, the frequency areas between 3000 and 6000 cycles per second are affected first in almost all instances before the lower frequencies and highest frequencies are affected.

The human ear is extremely sensitive and has a great deal of built-in reserve. For instance, it can hear extremely weak sounds of the softest whispers. Most people normally speak much louder than this. For this reason, a hearing handicap is not noticed until there is difficulty in hearing everyday speech, which occurs roughly between 25 and 35 decibels. It is for this reason that compensation is not paid for hearing losses below these approximate levels. It is also well known that with mild hearing losses the handicap is not so dramatic, but in very marked hearing losses the degree of handicap increases rapidly in severity. It is for this reason that proportionately greater compensation should be paid to individuals with substantial hearing loss.

The hearing test must enable the tester to determine the accuracy of the responses. This places a great deal of responsibility upon the administration of hearing tests. It is for this reason that hearing test equipment and the room in which the test is performed must comply

with standards established by the American National Standards Institute. The room must be quiet to a specified degree and the testing technique must follow a specified procedure so that it can be duplicated anywhere in the country.

Training and certification of the audiometric technician are required in the bill to assure that qualified persons are conducting proper hearing tests. Certification of technicians is accomplished through a nationally recognized certification body.

The bill's formula makes it easier to calculate the amount of hearing handicap since all that is necessary is to average the decibel levels at the frequencies 500, 1000, 2000 and 3000 cycles in the better ear and to refer to a chart which directly specifies how much hearing handicap is present.

The mobility of workers and the multiplicity of today's employment exposures is recognized in section 4(a) of the bill. While a number of workers will have spent their entire working years in one establishment, a greater number will have changed jobs several times for a variety of reasons, economic and otherwise. Therefore, to the extent an individual with hearing loss obtains new employment, it is believed to be inequitable that a total liability for all hearing loss wherever incurred should be attributable to the last employer. Thus section 4(a) of the proposed legislation specifically provides for a method of ascertaining previous hearing loss and holds that the current employer is only liable for hearing losses directly resulting from the most recent employment.

Section 13 in the amended bill places a responsibility on the employee to observe noise prevention practices in order to avoid harm. An employee who continuously fails to utilize suitable protective devices furnished by the employer is irresponsibly causing potential impairment.

The lack of specific provisions in the workers' compensation act itself for establishing occupational hearing loss liability emphasizes the paramount importance of this legislation. Currently, determinations often vary from jurisdiction to jurisdiction within the State. The current practices stem from case law, which is based on subjective individual cases.

The committee adopted a series of amendments, many of which were at the urging of the State AFL-CIO. A new section was added to clearly give a workers' compensation judge or referee the opportunity to order further audiometric tests if he or she is not satisfied with the reliability of previously introduced test results.

The waiting period for claim filing (which is designed to assist in determining the temporary or permanent nature of the hearing loss) was reduced from 10 to 4 weeks. Moreover, the language has been clarified to allow claims where removal of the worker from exposure is accomplished through the use of effective ear protection devices. Such use will hopefully prevent further damage if permanent injury appears likely. Retirement or job termination, therefore, will not be the only means of establishing eligibility for benefits.

The committee further amended the bill to delete the provision that employers not be obligated to furnish hearing aids. In keeping with the theory that only a worker's willful and reckless disregard for his own safety should bar recovery, the committee amended the employee responsibility section of the bill to provide that hearing loss will not be compensable if an employer can properly document that despite repeated warnings, an employee willfully fails to use effective and suitable protective devices provided by the employer.