FINAL REPORT OF THE JOINT

WORKMEN'S COMPENSATION SUBCOMMITTEE

TO

THE GOVERNOR

AND

THE GENERAL ASSEMBLY OF VIRGINIA

HOUSE DOCUMENT NO. 9

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Report of the Joint
Workmen's Compensation Subcommittee

November, 1980

To: Honorable John N. Dalton, Governor of Virginia
and
The General Assembly of Virginia

WORK OF THE SUBCOMMITTEE

For the last three years the Workmen's Compensation Subcommittee of the House Committee on Labor and Commerce has been making a comprehensive study of the Commonwealth's workmen's compensation system. During a meeting of the Labor and Commerce Committee held on July 14, 1978, Delegate Robert E. Washington of Norfolk, Chairman of the committee, asked the Subcommittee to work with a workmen's compensation task force in an effort to determine the root causes of recent substantial workmen's compensation rate increases within the State. The Subcommittee shortly thereafter began working with the task force in an attempt to identify ways of reducing future rate increases.

The task force, which consisted of representatives of the Virginia Industrial Commission, the State Corporation Commission, the State AFL-CIO, the Virginia Manufacturers Association, the workmen's compensation insurance industry, and other organizations, was divided into the following seven subcommittees:

(1) Data Systems

(2) Medical Costs

(3) Employer Practices and Benefit Utilization

(4) Standards of Service - Including Loss Control

(5) Industrial Commission - Law and Procedures

(6) Bureau of Insurance - Rate Procedures

(7) Self-Insurance Requirements

Each of those subcommittees met several times between September and December, 1978, in an effort to do as much work as possible prior to the end of the year. During a meeting held on December 20, 1978, the Legislative Subcommittee received the year-end reports of the seven task force subcommittees.

Although representatives of most of the task force subcommittees advised the Legislative Subcommittee that their study groups had not had sufficient time to complete their work, each subcommittee did offer various recommendations to the Legislative Subcommittee.

Consequently, the Subcommittee offered three pieces of legislation to the full Labor and Commerce Committee which resulted from recommendations made by two of the task force subcommittees. One piece of legislation incorporated a recommendation made by the Industrial Commission Subcommittee that the Industrial Commission elect one of its members chairman for a three year term beginning on July 1, 1979, and each succeeding three years thereafter. This piece of legislation became Chapter 459 of the 1979 Acts of Assembly.

Another piece of legislation offered by the Legislative Subcommittee which resulted from its study was a bill incorporating a recommendation made by the Industrial Commission Subcommitttee that defined the term "Filed" as previously found in § 65.1-52 of the Code of Virginia so that it applies to the entire Workmen's Compensation Act. This legislation became Chapter 80 of the 1979

Acts of Assembly.

The third piece of legislation offered by the Legislative Subcommittee arising from its study was a bill incorporating a recommendation made by the Self-Insurance Requirements Subcommittee that properly regulated and qualified groups of employers be authorized to self-insure under the Workmen's Compensation Act. The bill specified that before the State Corporation Commission approves such a self-insuring agreement, the Commission must find satisfactory proof that each member of the group is solvent and that the group is financially able to meet its obligations in compensating for injuries. This bill became Chapter 463 of the 1979 Acts of Assembly.

Because the task force and the Legislative Subcommittee had not had sufficient time to complete their work during 1978, it was decided that the study would be continued for another year. House Resolution No. 38 of the 1979 General Assembly continued the study.

HOUSE RESOLUTION NO. 38

Requesting the Workmen's Compensation Subcommittee of the House Committee on Labor and Commerce to continue its study of the factors accounting for the accelerating increase in workmen's compensation insurance premiums.

Agreed to by the House of Delegates, January 26, 1979

"WHEREAS, during the last three years there has been a demand for a ninety-eight percent increase in workmen's compensation insurance premiums in the Commonwealth; and

WHEREAS, only five percent of the ninety-eight percent increase has been attributable to law changes; and

WHEREAS, it is uncertain at the present time which factors are primarily responsible for the accelerating increase in workmen's compensation insurance premiums; and

WHEREAS, last year the House Committee on Labor and Commerce requested its Workmen's Compensation Subcommittee to study the factors which may be accounting for such increasing premiums and at the conclusion of its study to offer those recommendations, if any, which may lead to a decline in the rate of increase of such premiums; and

WHEREAS, the Subcommittee secured the services of various individuals with expertise in the workmen's compensation insurance field and assembled those individuals into an ad hoc committee to advise the Subcommittee; and

WHEREAS, although both the ad hoc committee and the Subcommittee have worked diligently during the past year and have offerd certain recommendations to the Committee on Labor and Commerce, additional work remains to be done; and

WHEREAS, the members of the ad hoc committee have agreed to continue working with the Subcommittee during this year; now, therefore, be it

RESOLVED by the House of Delegates, That the Workmen's Compensation Subcommittee of the House Committee on Labor and Commerce is requested to continue its study of the factors accounting for the accelerating increase in workmen's compensation insurance premiums. The Subcommittee is requested to utilize the expertise of its ad hoc workmen's compensation committee during its study.

The Subcommittee is requested to present its findings, conclusions and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred seventy-nine. All agencies of the Commonwealth shall assist the Subcommittee in its study."

During 1979 both the Subcommittee and the task force worked diligently to find ways of improving the State's workmen's compensation system. During a meeting held on April 27 of that year, the Subcommittee and the Commonwealth's new Commissioner of Insurance, Mr. James W.

Newman, decided that the task force would be reorganized into the following four subcommittees:

(1) The Law and Procedures Subcommittee

(2) The Rate Regulatory Procedures Subcommittee

(3) The Standards of Service Subcommittee

(4) The Data Systems Subcommittee

The Legislative Subcommittee requested that each task force subcommittee try to complete its work as promptly as possible.

The Legislative Subcommittee held several additional meetings during 1979, and each of the task force subcommittees met frequently in an effort to finish its work.

Those meetings resulted in the Legislative Subcommittee making the following recommendations at the end of 1979:

(1) Amend the State Workmen's Compensation Act by providing for the establishment of a medicial peer review system under the control of the Industrial Commission. It should be the function of the peer review system to help ensure that medical care costs are kept reasonable without adversely affecting the quality of health care. The advisory committee and regional committees of the peer review system should be given immunity from liability so long as action is not taken with malice.

The Subcommittee recommends that within the peer review system a State-wide advisory committee to the Industrial Commission should be created. The advisory committee should consist of at least one representative from each regional peer review committee, as well as representation from the insurance industry, the Virginia Hospital Association, employees and the medical profession.

The advisory committee would recommend to the Industrial Commission the regulations to be followed by each regional committee. Included in the regulations would be the criteria for determining which workmen's compensation claims must be turned over to the appropriate regional committee.

Regional peer review committees for each of the five health systems areas in the Commonwealth would be established. Each regional committee would consist of health care providers who practice in that area. The Industrial Commission would appoint the members of each regional committee, based upon the recommendations of the State-wide advisory committee.

It would be the duty of each regional committee to review workmen's compensation cases to determine any of the following aspects of health care:

(1) Whether it was appropriate for an injured worker to be hospitalized, and if so, whether the length of stay in the hospital was excessive;

(2) Whether the fees charged by the health care provider for treatment were excessive;

(3) Whether the frequency or duration of out-patient treatment was excessive;

(4) Whether the authorization for absence from work was excessive; and

(5) Whether the quality of medical care was sufficient.

Each regional committee would be authorized to retain an appropriate group or person to review workmen's compensation cases and make recommendations to the committee. The peer review system would be financed through funding by the Industrial Commission.

The General Assembly should statutorily establish the framework for the peer review system and the details of the system should be established by regulation.

The Subcommittee gave serious consideration to the advantages and disadvantages of a medical fee schedule vis-a-vis a peer review system. The Subcommittee ultimately chose the peer review system, because it appears such a system will not have the disadvantages of a fee schedule. The study group determined that a peer review system should help control the increase in health care costs in the workmen's compensation field without havig an adverse affect on the quality of medical care. In contrast, one argument the Subcommittee heard against adopting a medical fee schedule is that such a schedule might deprive some injured workers of the high quality of care they deserve, because many of the better qualified doctors will not handle cases if physician fees are set too low. Additionally, the Subcommittee was advised that if medical fees are set too high under such a schedule, employees will be unfairly burdened and workmen's compensation cases will attract many less qualified physicians.

Another reason why the Subcommittee recommends a peer review system over a medical fee schedule is that the peer review concept has the endorsement of the Medical Society of Virginia, while many physicians are in opposition to a fee schedule. The Subcommittee feels that the support of physicians is crucial to the success of any program designed to control medical costs. The study group is aware that some physicians greatly resent fee regulation and view such regulation as an infringement on their freedom to practice.

However, the Subcommittee would point out that while it believes the present is not the proper time to legislate a medical fee schedule, the adoption of such a schedule might have to be reconsidered at some future time. The study group believes that medical cost increases must be held down and that if, after a reasonable trial period of time, it is determined that a peer review system is not holding down costs, then it might be necessary to implement a stringent fee schedule. For this reason, the Subcommittee urges the medical profession to do all it can to hold down the costs of competent medical care.

(2) The State Corporation Commission and the Industrial Commission should adopt the standards of service recommended by the Standards of Service Subcommittee.

(3) Workmen's compensation rate hearings should be more adversary in nature. The Attorney General's Office should have present at all such hearings a representative who represents the interests of consumers. Also, the Bureau of Insurance of the State Corporation Commission should thoroughly scrutinize and critique any rate filing presented to the Corporation Commission by the Virginia Compensation Rating Bureau.

Section 2.1-133.1 of the Code of Virginia states that one of the duties of the Division of Consumer Counsel in the Office of the Attorney General shall be to "appear before governmental commissions, agencies and departments, including the State Corporation Commission, to represent and be heard on behalf of consumers' interest, and investigate such matters relating to such appearance."

The Subcommittee learned that during a recent workmen's compensation rate hearing before the Corporation Commission, the Attorney General's Office did not have a representative present. The Subcommittee feels that in light of the language of Code Section 2.1-133.1, the Attorney General's Office has a statutory duty to represent the interests of consumers during rate hearings before the Corporaton Commission. The Subcommittee believes it is very important that the Attorney General's Office represent consumers during such hearings. It is the study group's feeling that having such a representative present during rate hearings might make such hearings more adversary in nature.

Regarding the role of the Bureau of Insurance in rate hearings, the Commonwealth's Commissioner of Insurance advised the Subcommittee that the Bureau's casualty actuary, and certain members of the Bureau's staff, perform an in-depth analysis of all rate filings submitted by the Virginia Compensation Rating Bureau. Further, the Commissioner advised the Subcommittee that the Bureau's consulting actuary testifies during rate hearings regarding his analysis and conclusions. The Subcommittee was encouraged by this testimony, but the study group believes the Bureau of Insurance should take whatever additional steps it needs to take to ensure that rate hearings are truly adversary in nature.

The Subcommittee would note that because rate hearings have not been, to a great degree, adversary in nature, workmen's compensation carriers have had little difficulty in obtaining approval for large rate increases. The relative ease with which such carriers have been awarded large rate

increases creates a disincentive for the carriers to contest high physician and hospital fees. More adversary rate proceedings would put pressure on the workmen's compensation industry to contest seemingly excessive physician and hospital fees and might lead to a decrease in the rate of increase of workmen's compensation premiums. It is the Subcommittee's belief that an effective medical costs peer review system would also slow down the rate of increase of such premiums.

(4) The Subcommittee study should be continued for another year.

(5) Amend the Virginia Workmen's Compensation Act to make the Industrial Commission's Second Injury Fund more operative and meaningful.

The Subcommittee learned that funds for the Second Injury Fund are provided by a one-quarter of one percent tax levied against the premiums collected by each workmen's compensation insurer in Virginia. Pursuant to Code section 65.1-141.1, the Industrial Commission shall enter an award against the Second Injury Fund in favor of an employer or carrier only upon a finding that : (a) the employee has prior loss or loss of use of not less than twenty percent of one or more of the members set out in section 65.1-140; (b) the employee has suffered in an industrial accident an additional loss of use of any one of the members set out in section 65.1-140 of not less than twenty percent; (c) the combination of both impairments has rendered the employee totally or partially disabled; (d) the carrier or employer has paid the compensation due under sections 65.1-54 and 65.1-55, and the permanent partial disability due under section 65.1-56 and the medical treatment under section 65.1-88; and (e) the employee is entitled to further compensation for disability which has been paid by the employer or carrier.

Code section 65.1-142.1 provides that if an employer or carrier has paid compensation, medical expenses or vocational rehabilitation services on behalf of an employee under circumstances as set forth under section 65.1-141.1, the Industrial Commission shall enter an award from the Second Injury Fund in favor of the employer or carrier for : (a) reimbursement on a pro rata basis of the compensation paid for further disability as set forth in section 65.1-141.1(e), such prorating to be computed according to the number of weeks each impairment is allowed under the schedule in section 65.1-56; (b) reimbursement of reasonable medical expenses on the same basis as set forth in section 65.1-142.1(a), provided the second injury is to the same previously impaired member; and (c) reimbursement of reasonable vocational rehabilitation training services on the same basis as set forth in section 65.1-142.1(a). The reimbursement for reasonable medical expenses and for reasonable vocational rehabilitation training services cannot exceed seventy-five hundred dollars.

During its study the Subcommittee learned that since the establishment of the Second Injury Fund in 1975, no claims have been made against the Fund. Therefore, the study group determined that statutory changes were needed in order to make the Fund more operative and meaningful.

(6) Amend the Act to allow individual proprietors and members of partnerships to be covered under its provisions.

(7) Amend the Act so as to authorize the Industrial Commission to seek injunctive relief against uninsured employers who operate in defiance of the law.

(8) Commissioners of the Industrial Commission should have reduced workloads insofar as original hearings are concerned, so that more of their time can be devoted to cases being reviewed by the full Commission.

(9) Amend section 2.1-116 of the Code of Virginia so as to remove the Industrial Commission from the jurisdiction of the State Department of Personnel.

(10) The Industrial Commission should develop and make available to employers, employees and the general publi brochures which cover pertinent provisions of the Workmen's Compensation law. Additionally, the Industrial Commission should develop a Claim Procedures Manual as soon as possible.

(11) There should be no broadening of coverage under section 65.1-47.1, which relates to disability or death from respiratory disease, hypertension or heart disease.

(12) The Virginia Department of Rehabilitative Services and the Industrial Commission should

proceed with the development of a specialized program for treating industrially injured persons.

By the end of 1979, the Subcommittee felt that it had accomplished a great deal. However, the study group realized that additional work was desirable before the study should be terminated. Therefore, it was decided that the study would be continued for another year.

A more thorough discussion of the Subcommittee's work during 1978 and 1979 is contained in House Document No. 39 of the 1980 General Assembly - Report of the Workmen's Compensation Subcommittee of the House Committee on Labor and Commerce.

House Resolution No. 6 of the 1980 General Assembly continued the Subcommittee's study.

HOUSE RESOLUTION NO. 6

Requesting the Workmen's Compensatin Subcommittee of the House Committee on Labor and Commerce to continue its study of the factors accounting for the accelerating increase in workmen's compensation insurance premiums.

"WHEREAS, during the last four years there has been a demand for over a one hundred percent increase in workmen's compensation insurance premiums in the Commonwealth; and

WHEREAS, only a small percent of that increase has been attributable to law changes; and

WHEREAS, during nineteen hundred seventy-eight the House Committee on Labor and Commerce requested its Workmen's Compensation Subcommittee to study the factors which may be accounting for such increasing premiums and at the conclusion of its study to offer those recommendations, if any, which may lead to a decline in the rate of increase of such premiums; and

WHEREAS, the Subcommittee secured the services of various individuals with expertise in the workmen's compensation insurance field and assembled those individuals into an ad hoc committee to advise the Subcommittee; and

WHEREAS, House Resolution No. 38 of the nineteen hundred seventy-nine General Assembly continued the Subcommittee and ad hoc committee study; and

WHEREAS, although both the ad hoc committee and the Subcommittee have worked diligently during the past two years and have offered numerous recommendations to the Committee on Labor and Commerce, additional work remains to be done; and

WHEREAS, the members of the ad hoc committee have agreed to continue working with the Subcommittee during this year; now, therefore, be it

RESOLVED by the House of Delegates, That the Workmen's Compensaion Subcommittee of the House Committee on Labor and Commerce is requested to continue its study of the factors accounting for the accelerating increase in workmen's compensation insurance premiums. The Subcommittee is requested to continue utilizing the expertise of its ad hoc workmen's compensation committee during its study; and, be it

RESOLVED FINALLY, That the Subcommittee is requested to present its findings, conclusions and recommendations to the Governor and the General Assembly not later than November one, nineteen hundred eighty. All agencies of the Commonwealth shall assist the Subcommittee in its study."

During an organizational meeting held on April 3, 1980, the Subcommittee agreed upon a list of topics to be studied during the year. The Subcommittee also agreed that once again it would utilize the services of a workmen's compensation task force. The Subcommittee agreed that the task force would be divided into two subcommittees: The Law and Procedures Subcommittee and the Industrial Commission, Peer Review and Management Subcommittee. The Commonwealth's Commissioner of Insurance, Mr. James W. Newman, agreed to appoint the members of the ~~two task~~ force subcommittees.

Moreover, during the April 3 meeting it was agreed that the Senate Committee on Commerce

and Labor should be represented on the Legislative Subcommittee. Delegate William T. Wilson, Chairman of the Subcommittee, stated that he would communicate with Senator William E. Fears, Chairman of the Commerce and Labor Committee, regarding the appointment of Senate members to the Legislative Subcommittee.

When Delegate Wilson communicated with Senator Fears, the latter appointed Senators J. Harry Michael, Jr., Clive L. DuVal, 2d., and William F. Parkerson, Jr. to the Subcommitttee. (Later in the year Senator Michael was confirmed as a Federal Judge, and hence his membership on the Subcommittee was terminated).

During a meeting held on July 9, 1980, the Legislative Subcommittee agreed that the Law and Procedures Subcommittee would study the following topics:

(1) Code section 65.1-47.1, which provides that the death of, or any condition or impairment of health of, salaried or volunteer fire fighters caused by respiratory diseases, and the death of or any condition or impairment of health of, salaried or volunteer fire fighters, or any member of the State Police Officers Retirement System, or of any member of a county, city or town police department, or of a sheriff, or of a deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, caused by hypertension or heart disease, resulting in total or partial disability, shall be presumed to be an occupational disease suffered in the line of duty that is covered by the Workmen's Compensation Act unless the contrary be shown by a preponderence of competent evidence. Attached as Appendix I of this report is a copy of Code section 65.1-47.1.

(2) Senate Bill No. 256, which provides that Code sections 65.1-63 and 65.1-88 shall not preclude payment of disabilty benefits to a State police officer unless the Medical Board finds that such officer is able to perform the duties of a law-enforcement officer or that he is capable of being rehabilitated for comparable employment as a law-enforcement officer. Appendix II of this report consists of a copy of Senate Bill No. 256.

(3) Senate Bill No. 475, which would provide that for a worker covered under the Workmen's Compensation Act, if no one is either wholly or partly dependent upon that worker at the time of an accident resulting in his death, then his parents shall be entitled to the same compensation benefits as if they were dependents wholly dependent for support upon the worker. Senate Bill No. 475 constitutes Appendix III of this report.

(4) Senate Bill No. 515, which provides that for a worker covered under the Workmen's Compensation Act, if death results from an accident within nine years, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of the Act, to the estate of the deceased employee, a lump sum payment of $10,000. Senate Bill No. 515 constitutes Appendix IV of this report.

(5) Code section 65.1-99.1, which provides that in the event that the combined disability benefit entitlement of a claimant or his dependents under the Virginia Workmen's Compensation Act and the Federal Old-Age Survivors and Disability Insurance Act is less than eighty per centum of the average monthly earnings of the claimant before disability or death, cost of living supplements shall be payable, in addition to the other benefits payable under the Act, in accordance with the provisions of section 65.1-99.1, to those recipients of awards resulting from occupational disease, accident or death occuring on or after July 1, 1975. A copy of Code section 65.1-99.1 constitutes Appendix V.

During the July 9 meeting the Legislative Subcommittee further agreed that the Industrial Commission, Peer Review and Management Subcommittee would study the following issues:

(1) House Bill No. 792, which would provide that the Industrial Commission shall gather and examine such data as it deems necessary in order that the Commission shall be able to review current workmen's compensation insurance rates. The bill would further provide that the Commission shall make findings and determinations in regard to such rates and shall present its findings and determinations during workmen's compensation insurance rate hearings held before the State Corporation Commission. A copy of House Bill No. 792 is attached as Appendix VI.

(2) The State medical costs peer review system, which was established by Chapter 444 of the 1980 Acts of Assembly. Appendix VII consists of a copy of that chapter.

(3) The nature and length of notices sent by the Industrial Commission to injured employees advising them of their rights under the Workmen's Compensation Act and advising them of the procedures followed by the Commission when hearing cases. Appendix VIII consists of a copy of the present notice the Industrial Commission sends to each injured worker.

(4) House Bill No. 594, which would exempt the employees of the Industrial Commission from the State Personnel Act. Attached as Appendix IX is a copy of House Bill No. 594.

After giving the two task force subcommittees their assignments, the Legislative Subcommittee requested that the subcommittees hold their meetings during July and August and that each submit a written report to the Legislative Subcommittee by September 15. Members of the two task force subcommittees agreed to such a timetable and stated that their subcommittees would complete their work by September 15.

The next meeting of the Legislative Subcommittee was held on October 1, 1980. On that date the Legislative Subcommittee received the reports of the two task force subcommittees. The report of the Law and Procedures Subcommittee is attached as Appendix X of this report; and the report of the Industrial Commission, Peer Review and Management Subcommittee is attached as Appendix XI.

During the October 1 meeting, members of the Legislative Subcommittee questioned representatives of both task force subcommittees regarding some of the recommendations in the reports. At the conclusion of the meeting the Legislative Subcommittee decided to hold its final meeting on November 6, 1980. It was agreed that at that time decisions would be made concerning all of the issues facing the Subcommittee.

During the November 6 meeting the Legislative Subcommittee heard arguments in favor of and against the recommendations contained in the task force subcommittee reports. The Legislative Subcommittee carefully and thoroughly considered those arguments and then made a decision regarding each issue on its agenda.

RECOMMENDATIONS

The Subcommittee makes the following recommendations:

(1) Code section 65.1-47.1 should be amended so as to be applicable only to law-enforcement officers. Also, the statute should be amended to provide that a law-enforcement officer suffering from hypertension or heart disease, resulting in total or partial disability, shall be presumed to have an occupational disease suffered in the line of duty that is covered by the Workmen's Compensation Act, unless the Industrial Commission finds by a preponderance of competent evidence that such disease did not arise out of such employment. A draft of the recommended statute constitutes Appendix XII of this report.

It is also recommended that a new Code section, § 65.1-47.2, be created. The new section would apply only to fire fighters and would provide that any fire fighter suffering from respiratory disease, hypertension or heart disease, resulting in total or partial disability, shall be presumed to have an occupational disease suffered in the line of duty that is covered by the Act unless the contrary be shown by a preponderance of competent evidence. Appendix XIII consists of a draft of the proposed new section.

(2) Senate Bill No. 256 should be defeated.

(3) Code section 65.1-99.1 should be amended so that no worker injured in past years could collect more in benefits than a worker recently disabled with a similar injury. Also, since section 65.1-99.1 mandates that cost of living supplements shall be payable in the event that the combined disability ~~benefit~~ entitlement of a claimant or his dependents under the Workmen's Compensation Act and the Federal Old-Age Survivors and Disability Insurance Act is less than eighty percent of the average monthly earnings of the claimant before disability or death, the Subcommittee believes the statute should be amended so as to ~~authorize~~ the Industrial Commission to inquire as to whether the injured employee has applied for or is receiving social security benefits.

(4) House Bill No. 792 should be defeated. However, a permanent liaison between the Bureau of

Insurance and the Industrial Commission should be established in order to better coordinate and evaluate the need for pertinent workmen's compensation statistical information. Appendix XIV of this report outlines the reasons why a majority of both the Legislative Subcommittee and the Industrial Commission, Peer Review and Management Task Force Subcommittee believe that House Bill No. 792 should be defeated.

(5) Claimants for workmen's compensation benefits should be provided more information than is presently provided regarding both the Commonwealth's Workmen's Compensation Act and the nature of proceedings before the Industrial Commission. Consequently, the Subcommittee recommends that the "Proposed Text" attached as Appendix XV be sent by the Industrial Commission to every claimant for whom a file is established. Also, the Subcommittee recommends that the "Workmen's Compensation Notice and Instructions to Employers and Employees," which must be posted by each employer in a conspicuous place in his place of business, be changed so as to make reference to the notification provisions found in the "Proposed Text."

REASONS FOR RECOMMENDATIONS

The Subcommittee's first recommendation is that Code section 65.1-47.1 should be amended so as to be applicable only to law-enforcement officers. Also, the study group feels the statute should be amended to provide that a law-enforcement officer suffering from hypertension or heart disease, resulting in total or partial disability, shall be presumed to have an occupational disease suffered in the line of duty that is covered by the Workmen's Compensation Act, unless the Industrial Commission finds by a preponderance of competent evidence that such disease did not arise out of his employment.

It is also recommended that a new Code section, § 65.1-47.2, be created. The new section would apply only to fire fighters and would provide that any fire fighter suffering from respiratory disease, hypertension or heart disease, resulting in total or partial disability, shall be presumed to have an occupational disease suffered in the line of duty that is covered by the Act unless the contrary be shown by a preponderance of competent evidence.

It should be noted that the proposed new section, § 65.1-47.2, would be substantially the same as present Code section 65.1-47.1; except that the new section would relate only to fire fighters.

During the last two years the Subcommittee has heard a substantial amount of testimony regarding section 65.1-47.1. The study group has been informed that in practice, quite often the presumption the statute establishes has been interpreted as being conclusive rather than rebuttable. Various parties have testified that because of recent Virginia Supreme Court decisions, employers have very little chance of proving that the disability is not job related.

The Subcommittee was advised that in both the Berry case, 219 Va. 259 (1978) and the Page case 218 Va. 844 (1978), the Supreme Court ruled that an employer could not rebut the statutory presumption by introducing competent evidence which shows that a disability merely is not work related. Rather, the Subcommittee learned, the Court has interpreted the present statute to mean that the employer must introduce competent medical evidence which proves the specific non-work-related cause of the disability.

It should also be noted that the Subcommittee heard testimony which indicates that, in general, law-enforcement officers have significantly lower incidences of job related disabilities due to respiratory disease, heart disease and hypertension than do fire fighters.

The Subcommittee believes that the proposed amendments to section 65.1-47.1 would provide for a truly rebuttable presumption in the case of a law-enforcement officer who suffers from heart disease or hypertension. The Subcommittee believes that in light of the testimony presented to it, it should be sufficient for an employer to introduce competent evidence which shows that the disability did not arise out of the law-enforcement officer's employment. The Subcommittee does not believe that in a case involving a law-enforcement officer, the employer should have to introduce competent evidence which proves the specific non-work-related cause of the disability. The study group feels that the suggested amendments to section 65.1-47.1 would help in this regard.

On the other hand, the Subcommittee believes that the apparently significant health risks

associated with the profession of fire fighting mandate that fire fighters be covered under a statute similar to present section 65.1-47.1. Therefore, the study group recommends that a new section, § 65.1-47.2, be established, and that that section apply only to fire fighters.

The Subcommittee's second recommendation is that Senate Bill No. 256 be defeated.

S. B. No. 256 would provide that sections 65.1-63 and 65.1-88 shall not preclude payment of disability benefits to any mentally or physically incapacitated State police officer unless it is determined that such officer is able to perform the duties of a law-enforcement officer or that he is capable of being rehabilitated for comparable employment as a law-enforcement officer.

The bill was introduced because the former carrier of the State troopers' workmen's compensation coverage had used section 65.1-63 ("Refusal of Employment") and section 65.1-88 ("Duty to Furnish Medical Attention and Vocational Rehabilitation") as reasons for denying workmen's compensation benefits to State troopers. Proponents of the bill argued that sometimes troopers are treated unfairly in the rehabilitation process and are offered jobs which they find demeaning. In certain cases, troopers have refused such job offers and consequently had their workmen's compensation benefits cut off. The rationale behind S. B. No. 256 is to prohibit the termination of such benefits unless the State trooper is able to perform the duties of a law-enforcement officer or is capable of being rehabilitated for comparable employment as a law-enforcement officer.

The study group would note that the chief reason its workmen's compensation study was begun was to try to find ways to hold down the spiraling costs of workmen's compensation insurance. The Subcommittee believes that at least in some cases, the enactment of S. B. No. 256 would diminish an injured trooper's incentive to seek rehabilitation. Under S. B. No. 256, the result would be that such a trooper would be able to collect workmen's compensation benefits as long as he could not perform the functions of a law-enforcement officer, which would increase the cost of workmen's compensation insurance.

Also, the Subcommittee feels that while troopers claim that their employment is unique, other professions would make the same argument if S. B. No. 256 was passed. In short, the study group believes that the passage of the bill would result in demands by other professions to be included under its provisions, thus creating the potential for further increases in workmen's compensation premiums.

Moreover, the Subcommittee learned that the Industrial Commission utilizes certain standards in determining the reasonableness of a job offer to an injured employee. Although they are applied on a case by case basis, the study group learned that the Commission does consider such factors as the employee's prior wages, type of injury, age and prior employment in determining whether a job offered to an injured employee should be accepted. In short, the Industrial Commission presently compares the employee's former job to the new job offer in order to determine whether the offered work should be considered "demeaning" by the employee.

For these reasons the Subcommittee recommends the defeat of Senate Bill No. 256.

However, the Subcommittee would note that it has worked diligently with the Industrial Commission to ensure that the rehabilitation process supervised by that agency and the Department of Rehabilitative Services is equitable. The Subcommittee believes that a State trooper should be offered only reasonable work; and during its deliberations the study group informed the Industrial Commission of that belief. The Industrial Commission, in turn, has indicated that a trooper's benefits will be terminated only if he refuses a reasonable job offer.

The Subcommittee's third recommendation is that Code section 65.1-99.1 should be amended so that no worker injured in past years could collect more in benefits than a worker recently disabled with a similar injury. The recommended revision of the statute would also authorize the Industrial Commission to inquire as to whether the injured employee has applied for or is receiving social security benefits.

The Subcommittee would point out that presently, under Code section 65.1-54, $213 dollars per week is the maximum benefit that can be colleted by a worker injured today. However, over time an increase in benefits is based partly on an increase in the Consumer Price Index. Therefore,

under the present law, it is possible for a worker injured three or four years ago to draw more in benefits than a worker injured today; because recent increases in the Consumer Price Index have been so great. The Subcommittee heard testimony that in some cases workers injured three or four years ago are now receiving $225 dollars a week, while those workers injured today can receive only $213 per week. The Subcommittee favors the elimination of such situations, and for that reason it favors amending the statute to provide that no worker injured in past years could collect more in benefits than a worker recently disabled with a similar injury.

Also, the Subcommittee feels that since section 65.1-99.1 mandates that cost of living supplements shall be payable in the event that the combined disability benefit entitlement of a claimant or his dependents under the Workmen's Compensation Act and the Federal Old-Age Survivors and Disability Insurance Act is less than eighty percent of the average monthly earnings of the claimant before disability or death, it is logical to amend the statute so as to authorize the Industrial Commission to inquire as to whether the injured employee has applied for or is receiving social security benefits.

The Subcommittee's fourth recommendation is that House Bill No. 792 should be defeated. However, a permanent liaison between the Bureau of Insurance and the Industrial Commission should be established in order to better coordinate and evaluate the need for pertinent workmen's compensation statistical information.

A majority of the Subcommittee believes that the Industrial Commission should remain an impartial body which is primarily judicial in nature. It is felt that direct participation by the Commission in the rate making procedure might lead to an adversary role which would make it difficult for the Commission to maintain judicial neutrality in workmen's compensation cases. The study group would point out that of six states surveyed, only the workmen's compensation department in Ohio participates directly in rate hearings.

Also, the Subcommittee believes that the Bureau of Insurance, as well as various participants in rate hearings, already carefully scrutinize rate filings in order to determine whether the rates advocated by the workmen's compensation industry are too high or too low. The study group would note that the Bureau and the various participants in rate hearings employ professional actuaries who testify as to the actual and theoretical validity of data in the rate filings. Also, the data developed by the insurance industry is verified in detail by both the Virginia Compensation Rating Bureau and the National Council on Compensation Insurance.

Because the data developed by the insurance industry is already reviewed by so many parties, a majority of the Subcommittee believes it would be redundant and costly for the Industrial Commission to carry out the same function. If the Commission was directed to collect the same type of information which is furnished by the insurance industry, the State's taxpayers would pay the costs for additional staff, files, and space; along with the costs associated with an extensive updating of the Commission's data base.

Additionally, the Subcommittee would point out that Code section 65.1-117 already authorizes the Industrial Commission's participation in rate cases. A majority of the study group feels that H. B. No. 792 is unnecessary in light of the fact that 65.1-117 authorizes the State Corporation Commission to make such arrangements with the Industrial Commission as may be agreeable to the Industrial Commission, for collecting, compiling, preserving and publishing statistical and other data in connection with the regulation of workmen's compensation rates, to the end that duplication of work and expenditures may be avoided. The statute further provides that whenever it deems such to be proper, the Corporation Commission may, with the consent of the Industrial Commission, appoint members of the Industrial Commission, or its employees, as special agents of the Corporation Commission to take testimony and make reports with respect to any matter involving workmen's compensation rates. Attached as Appendix XVI is a copy of section 65.1-117.

The Subcommittee does believe it would be desirable to establish a permanent liaison arrangement between the Bureau of Insurance and the Industrial Commission to expedite the flow of data and information between the two bodies.

It should be noted that in regards to H.B. No. 792, a minority of the Subcommittee feels that the Industrial Commission should play an active role in reviewing workmen's compensation rates. The minority also feels that the Commission should analyze and make findings and determinations in regards to such rates and should present those findings and determinations during workmen's

compensation rate hearings held before the State Corporation Commission. In short, the minority believes that the Industrial Commission should increase its data collection capabilities and be more active in rate cases.

The Subcommittee's fifth recommendation is that claimants for workmen's compensation benefits should be provided more information then is presently provided regarding both the Commonwealth's Workmen's Compensation Act and the nature of proceedings before the Industrial Commission. Consequently, the study group recommends that the "Proposed Text" attached as Appendix XV be sent by the Industrial Commission to every claimant for whom a file is established. Also, the Subcommittee recommends that the present "Workmen's. Compensation Notice and Instructions to Employers and Employees," which must be posted by each employer in a conspicuous place in his place of business, be changed so as to make reference to the notification provisions found in the "Proposed Text."

The Subcommittee would note that a major problem with regards to the present notice sent to each injured employee who files a claim is that the notice does not describe certain basic elements of the Workmen's Compensation Act which might affect the employee. Also, the Subcommittee feels that quite often an injured employee appears alone before the Commission and has no idea how to properly prepare and develop a record. Thus, often he introduces insufficient evidence into the record. In many such cases, because of the insufficient record, the employee must appeal the Commission's original decision, retain an attorney and obtain a special leave of court under the after discovered evidence rule in order to more fully develop the record.

The Subcommittee would note that the "Proposed Text" addresses these issues much more thoroughly than does the present notice. The study group believes that since many injured employees lack knowledge regarding both the Workmen's Compensation Act and the nature of proceedings before the Industrial Commission, the "Proposed Text" can help ensure that the injured worker is aware of his options under the law. The Subcommittee further believes that by including in the poster a reference to the notification provisions found in the "Proposed Text," care will have been taken to ensure that each injured employee covered under the Act is aware of his responsibilities under the Act.

CONCLUSION

The Subcommittee expresses its appreciation to all parties who participated in its study. In particular, the study group would like to acknowledge the outstanding contributions made to the study by the workmen's compensation task force.

The Subcommittee's recommendations have been offered only after carefully and thoroughly studying all of the information it received. The Subcommittee believes its recommendations are in the best interests of the Commonwealth, and it encourages the General Assembly to adopt those recommendations.

Respectfully submitted,

William T. Wilson, Chairman
Claude W. Anderson
Calvin G. Sanford
Norman Sisisky
Warren G. Stambaugh
Clive L. DuVal, 2d.
William F. Parkerson, Jr.

DISSENT OF DELEGATE WARREN G. STAMBAUGH
TO THE FINAL REPORT OF THE JOINT WORKMAN'S COMPENSATION SUBCOMMITTEE
January 7, 1981

I disagree with the recommendations of the Joint Subcommittee concerning the heart-lung presumption for law enforcement officers and firefighters, as well as with the recommendation concerning cost-of-living increases for workers suffering long-term disabilities.

It is hardly necessary, I think, to spend a great deal of time recounting the dangers and stresses associated with the professions of police officer and firefighter. Any reasonable examination of these difficult and necessary jobs will plainly reveal the hazards encountered in performing them.

Because of the nature of respiratory, hypertension, and heart ailments, it is often difficult, if not impossible, to be entirely certain of an exact cause of the disease. It is, however, reasonably clear that the working environment of both policemen and firefighters is conducive to illnesses of this nature.

The existence of this risk and the inherent difficulty in tracing the onset of such an illness to a particular work-related event is the reason, in my view, that the presumption of § 65.1-47.1 was enacted. We know that respiratory disease, hypertension, and heart disease are occupational hazards for firefighters and police officers. We know that the causes of these diseases are often cumulative rather than instantaneous. Because we know these two things, we created a presumption -- a rebuttable presumption -- that the disease and the occupation are interrelated.

Note how carefully we circumscribe this presumption.

The presumption applies only if the employee has previously had a physical examination -- conducted by doctors of the employer's choosing under standards and conditions established by the employer -- which has shown that the police officer or firefighter was free of the disease.

Once this condition has been met, the employee is entitled to the presumption. The employer can rebut the presumption by proving that the illness stems from some non-work-related cause. The Subcommittee seems to feel that this is too great a burden to bear. But is it really? Note carefully just how severe the burden is. It is not proof beyond a reasonable doubt. It is not clear and convincing proof. It is merely a "preponderence of competent evidence."

I fail to see how this low level of proof of some other cause places an intolerable burden on the employer. Surely, if the employer cannot even meet this low standard of proof, the presumption ought to apply.

The Subcommittee, however, says that the presumption has been "interpreted as being conclusive rather than rebuttable..," and that "employers have very little chance of proving that the disability is not job related." As support for this assertion, the Subcommittee relies -- unjustifiably in my view -- on two recent Virginia Supreme Court cases: Berry v. County of Henrico, 219 Va. 259 (1978); and Page v. City of Richmond, 218 Va. 844 (1978).

I believe that a fair reading of these two cases shows that the fault, if any, is not with the statute but with the proof submitted by the employers to rebut the presumption. I cannot justify changing this important provision because of the inability of the two localities involved and/or their insurers to satisfy even the very minimal requirement of proving by a mere preponderence of the evidence that the particular illness in each case resulted from some non-work-related cause.

The Subcommittee says the Court has required an employer to prove "the specific non-work-related cause" of the disability. This seems to me to be a misreading of the Court's Page opinion where the Court clearly says that the "employer must adduce competent medical evidence of a non-work-related cause..." (emphasis added).

The difference between "specific" and "a" might seem one more of form than substance, but it seems to me to be a real and significant difference and one that is not overly burdensome to employers. I think the Court is saying that it is not enough simply to have medical evidence that the disease is not work-related, but that there must be some showing that the disease is caused by some non-work-related factor. Since this showing must be convincing only to a mere preponderence standard, I cannot see how this becomes a conclusive rather than rebuttable presumption.

There was no such evidence in either the Page or Berry case. The doctors there were saying, in effect, "we don't believe this is work-related, but we can't tell you what else caused it." Under those circumstances, in my opinion, the presumption was meant to apply in favor of the employee and it did. I might note that the

failure of the employer in the Page case to attempt to link the employee's 40 years of heavy cigarette smoking to his respiratory disease is not a failure of the statute but of the presentation of proof and is hardly a sufficient reason to completely change the entire statutory scheme. And the failures in Berry and the more recent case of Garrison v. Prince William County, No. 790659 (April 18, 1980) were those of the employer in not establishing adequate pre-employment physicals to detect pre-existing conditions. Neither the failure of proof or the failure of the employer's own standards is, in my view, sufficient reason to change the statute.

If the Subcommittee's recommendations were to be adopted, the burden of proof would be on the employee in every case not only to show that the disease was work-related but that it was not caused by some non-work-related factor. This would be the exact reversal of what this statute was enacted to accomplish and would be a de facto repeal of the presumption. It would place police officers and firefighters in an intolerable position which I cannot believe the General Assembly desires to do. I am therefore opposed to any change in this statute and respectfully dissent from this recommendation of the Subcommittee.

As to the Subcommittee's recommendation No. 3, I believe the concern which prompted this proposal is misplaced.

While the Subcommittee views with some alarm the fact that some recipients of long-term disability are receiving more than more recently disabled workers for the same illness or injury, I see it as a natural and even equitable result.

A worker only recently injured has presumably been fully employed and earning his full wages all the while the long-term disabled worker has been dependent on Workman's Compensation for his only income. The fact that there may be as much as a $12 per week difference between their compensation payments hardly seems surprising given the long-term reliance on compensation benefits by the one and the relatively recent reliance by the other. To create a system where a worker with an injury or illness which is permanently disabling may never receive more compensation than someone only recently injured imposes an unfair penalty on both of them.

Nor, for that matter, does a $12 per week difference seem to me to be an intolerable injustice which somehow cries out for a remedy. I rather suspect that the recently disabled worker has been earning far more than that differential every week while the long-term disabled worker has been dependent on Workmen's Compensation. I suspect also that the recently disabled worker will gladly tolerate this minor difference knowing that should his own injury prove to be long-term, he will benefit from the cost of living increase.

Although I am against putting a cap on the cost-of-living increase, I see no harm in amending the statute to give the Industrial Commission authority to inquire as to Social Security Benefits.

§ 65.1-47.1. Presumption as to death or disability from respiratory disease, hypertension or heart disease. — The death of, or any condition or impairment of health of, salaried or volunteer fire fighters caused by respiratory diseases, and the death of, or any condition or impairment of health of, salaried or volunteer fire fighters, or of any member of the State Police Officers Retirement System, or of any member of a county, city or town police department, or of a sheriff, or of a deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, caused by hypertension or heart disease, resulting in total or partial disability shall be presumed to be an occupational disease suffered in the line of duty that is covered by this act unless the contrary be shown by a preponderance of competent evidence; provided that prior to making any claim based upon such presumption, such salaried or volunteer fire fighter shall have been found free from respiratory diseases, hypertension or heart disease, as the case may be, or such member of the State Police Officers Retirement System, or such member of a county, city or town police department, or such sheriff, or such deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, shall have been found free from hypertension or heart disease, as the case may be, by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the appointing authority or as the governing body employing such person, in the case of a sheriff or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, the county or city of which he is sheriff or deputy sheriff, shall prescribe and which shall have been conducted by physicians whose qualifications shall have been prescribed by such appointing authority or by such governing body; and provided further, that any such fire fighter, law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, or, in the case of his death, any person entitled to make a claim under this act, claiming the benefit of such presumption shall, if requested by such appointing authority or by such governing body or its authorized representative submit himself, in the case of a claim for disability benefits, to physical examination by any physician designated by such appointing authority or by such governing body which examination may include such tests or studies as may reasonably be prescribed by the physician so designated or, in the case of a claim for death benefits, submit the body of the deceased fire fighter, law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, to a postmortem examination to be performed by the medical examiner for the county, city or town appointed under § 32-31.16. Such fire fighter, law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, or claimant shall have the right to have present at such examination, at his own expense, any qualified physician he may designate. (1976, c. 772; 1977, c. 620; 1978, c. 761.)

Code Commission note. — Section 32-31.16, referred to in this section was repealed by Acts 1979, c. 711. See now § 32.1-282.

The purpose of the rebuttable presumption is to establish by law, in the absence of evidence, a causal connection between death or disability from certain diseases and the occupation of a fire fighter. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978).

The effect of the presumption is to eliminate the necessity for proof by the claimant of causal connection. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978).

When presumption applicable. — When read and considered together with §§ 27-40.1 and 27-40.1:1, it is clear that the General Assembly intended the presumption created in this section to apply in those instances where an examination conducted under the direction and control of the employer fails to make a positive finding of the disease which subsequently brings about the disability or death of the fire fighter. Berry v. County of Henrico, 219 Va. 259, 247 S.E.2d 389 (1978).

Evidence insufficient to rebut. — Where the doctor failed to give his opinion as to the cause of the fire fighter's disabling respiratory disease, or to state affirmatively that the evidence disproved any causal connection between the disease and his occupation, and merely reported that he had found no evidence of such a connection, the evidence was insufficient to rebut the presumption under this section. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978), decided prior to 1978 amendment.

To rebut the statutory presumption the employer must adduce competent medical evidence of a nonwork-related cause of the disabling disease. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978), decided prior to 1978 amendment, which changed the amount of evidence required to rebut the presumption to a preponderance of competent evidence.

The presumption shifts the burden of going forward with evidence from the claimant to his employer. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978).

In the absence of evidence, the statutory presumption prevails and controls. Page v. City of Richmond, 218 Va. 844, 241 S.E.2d 775 (1978), decided prior to the 1978 amendment, which changed the amount of evidence required to rebut the presumption to a preponderance of competent evidence.

Applied in City of Williamsburg v. Altizer, Va. , 255 S.E.2d 536 (1979).

Appendix II

ENGROSSED

SENATE BILL NO. 256

Senate Amendments in [ ] - February 11, 1980

A BILL to amend and reenact § 51-152 of the Code of Virginia which provides for disability retirement of members of the State Police Officer's Retirement System.

Patrons—Goode, Scott, and Barker

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 51-152 of the Code of Virginia is amended and reenacted as follows:

§ 51-152. Disability retirement generally.—(a) Any member in service or within ninety days after termination of service who has five or more years of creditable service may, at any time before his normal retirement date, retire on account of disability not compensable under the Virginia Workmen's Compensation Act upon written notification to the Board, given by the member or his appointing authority, setting forth at what date the retirement is to become effective; provided that such effective date shall be after his last day of service but shall not be more than ninety days prior to filing of such notification; provided further that the Medical Board, after a medical examination of the member requesting disability retirement, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such notification, mentally or physically incapacitated for the further performance of duty and that such incapacity is likely to be permanent and that such member should be retired.

(b) Any member in service or within ninety days after termination of service may, at any time before his normal retirement date, retire on account of disability from a cause compensable under the Virginia Workmen's Compensation Act, upon written notification to the Board, made by the member or his appointing authority, setting forth at what date the retirement is to become effective; provided that such effective date shall be after his last day of service, but shall not be more than ninety days prior to the filing of such notification; provided further that the Medical Board, after a medical examination of the member requesting disability retirement, shall certify that such member is, and has been continuously since such effective date if prior to the filing of such notification, mentally or physically incapacitated for the further performance of duty *as a State police officer* and that such incapacity is likely to be permanent and that such member should be retired. *For purposes of this subsection, §§ 65.1-63 and 65.1-88 shall not preclude payment of disability benefits to such members* [*: unless the Medical Board finds that such officer is able to perform the duties of a law-enforcement officer or that he is capable of being rehabilitated for comparable employment as a law-enforcement officer.*]

(c) In the event no compensation is finally awarded under the Virginia Workmen's Compensation Act with respect to the disability of a member, due to legal proceedings or otherwise resulting in settlement from the person, or persons causing such disability, the Virginia Industrial Commission, upon request of the Board, shall for the purpose of this section determine whether such member's disability was from a cause compensable under the Virginia Workmen's Compensation Act.

(d) Any member in service who is totally and permanently disabled while on active duty as a result of the felonious misconduct of another, and who is not less than thirty years of age and has been in service not less than seven years, and whose disability has occurred since January one, nineteen hundred and sixty, may retire as provided in (b) above and the said member shall be entitled to maintenance and services at the Woodrow Wilson Rehabilitation Center without being liable to pay for the same.

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the Senate	Clerk of the House of Delegates

SENATE BILL NO. 475

Offered February 4, 1980

A BILL to amend and reenact § 65.1-68 of the Code of Virginia, which provides for the division of death benefits under Workmen's Compensation Act.

Patron--Moody (By Request)

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-68 of the Code of Virginia is amended and reenacted as follows:

§ 65.1-68. Division when there is more than one dependent or no dependents.--If there is more than one person wholly dependent, the death benefit shall be divided among them; and persons partly dependent, if any, shall receive no part thereof. If there is no one wholly dependent and more than one person partially dependent, the death benefit shall be divided among them according to the relative extent of their dependency. *If no one is either wholly or partly dependent upon the deceased employee at the time of the accident, then the parents shall be entitled to the same compensation benefits as if they were dependents wholly dependent for support upon the employee.*

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the Senate	Clerk of the House of Delegates

SENATE BILL NO. 515

Offered February 4, 1980

A BILL to amend and reenact §§ 65.1-4 and 65.1-65 of the Code of Virginia, which provide for payment of workmen's compensation benefits to named beneficiary of the employee.

Patron–Nolen

Referred to the Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 65.1-4 and 65.1-65 of the Code of Virginia are amended and reenacted as follows:

§ 65.1-4. "Employee" defined.–Unless the context otherwise requires, "employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer; and any person who is an apprentice, trainee, or retrainee who is regularly employed while receiving training or instruction outside of regular working hours and off the job, so long as the training or instruction is related to his employment, and is authorized by his employer, and as relating to those so employed by the State the term "employee" includes the officers and members of the national guard, the Virginia State guard and the Virginia reserve militia, registered members on duty or in training of the United States Civil Defense Corps of this State, the forest wardens, the clerks and other employees of the district courts and all other officers and employees of the State, except only such as are elected by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate, provided that this exception shall not apply to any "State employee" as defined in paragraph (5) of § 51-111.10 nor to Supreme Court Justices, nor to judges of circuit or district courts, nor to members of the Industrial Commission and the State Corporation Commission, nor to the Superintendent of State Police; as relating to municipal corporations and political subdivisions of the State, the term "employee" includes all officers and employees thereof, except such as are elected by the people or by the governing body of the municipal corporation or political subdivision, who act in purely administrative capacities and are to serve for a definite term of office. Policemen and fire fighters, and sheriffs and their deputies, town sergeants and their deputies, county and city commissioners of the revenue, county and city treasurers, attorneys for the Commonwealth, clerks of courts of record, and their deputies, officers and employees, shall be deemed to be employees of the respective cities, counties or towns in which their services are employed and by whom their salaries are paid or in which their compensation is earnable. Judges, clerks, deputy clerks and employees of juvenile and domestic relations district courts and general district courts shall be deemed employees of the State. Every executive officer elected or appointed and empowered in accordance with the charter and bylaws of a corporation, municipal or otherwise, shall be an employee of such corporation under this Act, except as otherwise provided herein with respect to municipal corporations and political subdivisions of the State. Any reference to an employee who has been injured

shall, when the employee is dead, include also his legal representative, dependents and other persons to whom compensation may be payable , *such as the administrator of the estate* .

§ 65.1-65. Compensation to dependents or named beneficiary of employee killed.– *A.* If death results from the accident within nine years, the employer shall pay, or cause to be paid, subject, however, to the provisions of the other sections of this Act in one of the methods hereinafter provided, to the dependents of the employee wholly dependent upon his earnings for support at the time of the accident a weekly payment equal to two thirds of his average weekly wages, but not more than one hundred per centum of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five per centum of the average weekly wage as defined therein for a period of four hundred weeks, from the date of the injury, except, however, those dependents specified in § 65.1-66 (1), (2) and (3) shall be paid, a weekly payment equal to two thirds of the employee's average weekly wages, but not more than one hundred per centum of the average weekly wage of the Commonwealth as defined in § 65.1-54 nor less than twenty-five per centum of the average weekly wage as defined therein for a period of five hundred weeks from the date of the injury, and burial expenses not exceeding one thousand dollars and in addition reasonable transportation expenses for the deceased not exceeding three hundred dollars. If the employee leaves dependents only partly dependent upon his earnings for support at the time of the injury, the weekly compensation to be paid, as aforesaid, shall equal the same proportion of the weekly payments for the benefit of persons wholly dependent as the extent of partial dependency bears to total dependency. When weekly payments have been made to an injured employee before his death, the compensation to dependents shall begin from the date of the last of such payments but shall not continue more than four hundred weeks from the date of the injury except to those dependents specified in § 65.1-66 (1), (2) and (3) to whom compensation shall not continue more than five hundred weeks from the date of the injury.

B. If death results from the accident within nine years, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this act in the method hereinafter provided, to the estate of the deceased employee, a lump sum payment of ten thousand dollars.

Official Use By Clerks	
Passed By The Senate	**Passed By The House of Delegates**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
_____	_____
Clerk of the Senate	Clerk of the House of Delegates

§ 65.1-99.1. Cost of living supplements for total incapacity and dependents of deceased. — In the event that the combined disability benefit entitlement of a claimant or his dependents under the Virginia Workmen's Compensation Act and the Federal Old-Age Survivors and Disability Insurance Act is less than eighty per centum of the average monthly earnings of the claimant before disability or death, cost of living supplements shall be payable, in addition to the other benefits payable under this Act, in accordance with the provisions of this section to those recipients of awards resulting from occupational disease, accident or death occurring on or after July one, nineteen hundred seventy-five under §§ 65.1-54, 65.1-56 (18), 65.1-56.1 (4), 65.1-65 and 65.1-65.1.

The amounts of supplementary payments provided for herein shall be determined as a per centum of the benefit allowances supplemented hereby. Said per centum shall be determined by reference to the increase, if any, in the United States Average Consumer Price Index for all items, as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average, from one calendar year to another.

Amounts of supplementary payments shall be determined initially as of July one, nineteen hundred seventy-six, based on the per centum increase, if any, of the Average Consumer Price Index for all items from the calendar year nineteen hundred seventy-four to the calendar year nineteen hundred seventy-five and successively annually thereafter. Any change in the cost of living supplement determined as of any determination date shall become effective as of October first next following such determination date and as the case may be, shall be added to or subtracted from any cost of living supplements previously payable. (1975, c. 472.)

Law Review. — For survey of Virginia law on workmen's compensation and welfare for the year 1974-1975, see 61 Va. L. Rev. 1862 (1975).

Appendix VI

HOUSE BILL NO. 792

Offered February 4, 1980

A BILL to amend the Code of Virginia by adding a section numbered 65.1-10.1 providing certain duties of the Industrial Commission.

Patron—Wilson

Referred to the Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 65.1-10.1 as follows:

§ 65.1-10.1. Duties of Industrial Commission.—The Commission shall gather and examine such data as it deems necessary in order that the Commission shall be able to review current workmen's compensation insurance rates. The Commission shall make findings and determinations in regard to such rates and shall present their findings and determinations during workmen's compensation insurance rate hearings held before the State Corporation Commission. The Commission shall annually report such findings and determinations and any recommendations it deems appropriate to the Governor and the General Assembly.

Official Use By Clerks	
Passed By The House of Delegates	**Passed By The Senate**
without amendment ☐	without amendment ☐
with amendment ☐	with amendment ☐
substitute ☐	substitute ☐
substitute w/amdt ☐	substitute w/amdt ☐
Date: _____	Date: _____
Clerk of the House of Delegates	Clerk of the Senate

CHAPTER 444

An Act to amend the Code of Virginia by adding in Title 65.1 a chapter numbered 13, consisting of sections numbered 65.1-153 through 65.1-163, to create a medical costs peer review system under Workmen's Compensation Act.

[H 641]

Approved March 29, 1980

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 65.1 a chapter numbered 13, consisting of sections numbered 65.1-153 through 65.1-163, as follows:

CHAPTER 13.

MEDICAL COSTS - PEER REVIEW.

§ 65.1-153. Definitions.—As used in this chapter:

1. "Utilization review" means the initial evaluation of appropriateness, in terms of the level, quality and duration of health care and health services provided a patient based on medically accepted standards. Such evaluation shall be accomplished by means of a system which identifies any utilization of medical services above the usual range of utilization for such services based on medically accepted standards;

2. "Peer review" means an evaluation and determination by a regional peer review committee of the appropriateness of the level, quality, duration and cost of health care and health services provided a patient based on medically accepted standards;

3. "Physician" means any person licensed to practice medicine or osteopathy in this Commonwealth pursuant to Chapter 12 of Title 54 of the Code of Virginia;

4. "Hospital" means any facility in which the primary function is the provision of diagnosis, of treatment and of medical and nursing services, surgical or nonsurgical, for two or more nonrelated individuals, including hospitals known by varying nomenclature or designation such as sanitoriums, sanitariums and general, acute, short-term, long-term and outpatient hospitals;

5. "Health systems area" means those cities, counties and towns in the Commonwealth that are included within the jurisdiction of the health systems agency for that portion of the Commonwealth, as established by the U.S. Department of Health and Welfare pursuant to United States Public Law 93-641; provided, however, that Scott County, Washington County and the city of Bristol, Virginia shall be deemed to be a part of Health Services Area III as established by the U.S. Department of Health and Welfare.

§ 65.1-154. Statewide Coordinating Committee.—There shall be a Statewide Coordinating Committee composed of nine residents of the Commonwealth appointed by the Speaker of the House of Delegates and the Committee on Privileges and Elections of the Senate of Virginia. Five of the committee members shall be physicians each of whom has patients the cost of whose treatment is reimbursed in whole or in part pursuant to this title; each physician member shall be appointed from and represent a different health systems area. One member shall be a representative of employers in the Commonwealth, one member shall be a representative of employees in the Commonwealth, one member shall be a representative of the Virginia Hospital Association and one member shall be a representative of insurance carriers that provide workmen's compensation insurance in the Commonwealth. The physician members of the committee may be appointed from nominations submitted by The Medical Society of Virginia. The chairman of the Statewide Coordinating Committee shall be a physician member of and selected by the Committee.

Of the members first appointed to the Statewide Coordinating Committee, three members shall be appointed for a term of one year, three members shall be appointed for a term of two years and the remaining members shall be appointed for a term of three years. Thereafter, appointments shall be made for terms of three years or the unexpired portions thereof. A vacancy other than by expiration of term shall be filled by the Governor for the unexpired term. No person shall be eligible to serve more than two consecutive three-year terms.

§ 65.1-155. Compensation of members; expenses of Committee.—Each member of the Statewide Coordinating Committee shall receive fifty dollars for each day actually employed in the discharge of his official duties, together with all necessary expenses incurred. The compensation and expenses of the members and the necessary expenses of the Committee shall be paid out of the State Treasury upon the warrants of the Comptroller.

§ 65.1-156. Regional peer review committees.—The Statewide Coordinating Committee shall establish a regional peer review committee in each health systems area. Each regional peer review committee shall be composed of five physicians appointed by the Statewide Coordinating Committee from nominations submitted by The Medical Society of Virginia. Each committee member shall practice in the health systems area and have patients the costs of whose treatment is reimbursed in whole or in part pursuant to this Title. The term of each member of each regional peer review committee shall be established by the Statewide Coordinating Committee.

§ 65.1-157. Utilization review.—The Statewide Coordinating Committee shall develop a utilization review program for services rendered by physicians that are paid for in whole or in part pursuant to this Title. Each regional peer review committee shall have responsibility for implementing the utilization review program in its health systems area.

§ 65.1-158. Peer review.—The Statewide Coordinating Committee shall develop a peer review program for services rendered by physicians that are paid for in whole or in part pursuant to this title. The peer review program shall provide for peer review of services rendered by physicians. Each regional peer review committee shall have the responsibility for implementing the peer review program in its health systems area. Referrals may be made to the regional peer review committee pursuant to the utilization review program or by the Industrial Commission, any insurance company providing coverage for the cost of any services paid for in whole or in part pursuant to this chapter or any employer.

§ 65.1-159. Corrective action.—If it is determined that a physician improperly

overutilized or otherwise rendered or ordered inappropriate medical treatment or services, or that the cost or duration of such treatment or services was inappropriate, the regional peer review committee shall, in accordance with the standard set forth in § 65.1-89 of the Code of Virginia, adjust the amount of reimbursement to which the physician is entitled pursuant to this title and, if the physician already has been paid, shall require such physician to repay any excess amount that was paid to him for rendering or ordering such treatment or services. Any such determination by any regional peer review commission shall be reviewable by the Industrial Commission, which shall have exclusive jurisdiction to effect any such review. Any review by the Industrial Commission shall be pursuant to § 65.1-102 of the Code of Virginia. To be entitled to review by the Industrial Commission, the physician must deliver to the Industrial Commission written notice of his request for review, which notice must be received within thirty days after notice of the decision of the regional peer review committee is received by the physician.

By accepting payment pursuant to this title, (i) any physician, any hospital and any employee shall be deemed to have consented to the submitting of all records concerning treatment of the employee to the Industrial Commission, to the Statewide Coordinating Committee, to any regional peer committee, or to any agent of any such committee, and (ii) any physician shall be deemed to agree to comply with any decision of the regional peer review committee, subject to his right to have the decision reviewed by the Industrial Commission.

§ 65.1-160. Immunity.—Every member of the Statewide Coordinating Committee and every member of a regional peer review committee, and every agent of each such committee, shall be immune from civil liability for any act, decision, omission or utterance done or made in performance of his duties while serving as a member of such committee so long as such act, decision, omission or utterance is not done or made in bad faith or with malicious intent.

§ 65.1-161. Privileged communications.—The provisions of Chapter 21 (§ 2.1-340 et seq.) of Title 2.1 of the Code of Virginia shall not be applicable to the Statewide Coordinating Committee or any regional peer review committee. The proceedings, minutes, records and reports of the Statewide Coordinating Committee and each regional peer review committee, together with all communications, both oral and written, originating in or provided to any such committees are privileged communications which shall not be disclosed or obtained by legal discovery proceedings unless a circuit court, after a hearing and for good cause arising from extraordinary circumstances being shown, orders the disclosure of such proceedings, minutes, records, reports or communications.

§ 65.1-162. Employment of staff; contract for services, rules and regulations.—Subject to the approval of the Industrial Commission, the Statewide Coordinating Committee shall have the authority to employ a staff and to contract with any organization in order to operate the utilization review program in any health systems area. Subject to the approval of the Industrial Commission, the Committee shall have the authority to adopt and amend such rules and regulations as may be necessary to implement the utilization review and peer review programs provided for in this chapter.

§ 65.1-163. Funding.—The cost of developing and administering the utilization review program and the peer review program shall be paid pursuant to § 65.1-136 of the Code of Virginia.

DEPARTMENT OF WORKMEN'S COMPENSATION
INDUSTRIAL COMMISSION OF VIRGINIA
P. O. BOX 1794 RICHMOND, VIRGINIA 23214

MPLOYEE AND ADDRESS

INSURANCE CARRIER AND ADDRESS

Appendix VIII

MPLOYER

ccident Date
ature of Injury
.C. FILE NO.
arrier File No.

he Industrial Commission has been advised of our injury. Your employer may be liable for ompensation and medical care under the Work-en's Compensation Act. Unless you lose more an seven days from work, you are not entitled compensation unless you have a specified per-anent injury, but you may be entitled to medi-l care.

you feel you are entitled to compensation, d/or medical care beyond two years from the te of the accident, and the Commission has t entered an award, you must file a claim in iting with the Commission within two years m the date of the accident even though the employer has reported the accident or has paid medical expenses. Forms for filing a claim are available upon request.

If again disabled or unable to earn your former wage due to the injury after returning to work, you must notify the employer or insurance company and the Industrial Commission immediately unless compensation is resumed.

If you do not receive compensation promptly, first communicate with the employer or insurance company. Then, if payments are not promptly made, you may communicate with the Industrial Commission.

USE ABOVE RED I.C. FILE NUMBER ON ALL COMMUNICATIONS TO THE INDUSTRIAL COMMISSION

Appendix IX

HOUSE BILL NO. 594

Offered January 30, 1980

A BILL to amend and reenact § 2.1-116 of the Code of Virginia, which exempts certain employees from the State Personnel Act.

Patrons–Sanford, Wilson, Anderson, Stambaugh, and Sisisky

Referred to the Committee on Labor and Commerce

Be it enacted by the General Assembly of Virginia:

1. That § 2.1-116 of the Code of Virginia is amended and reenacted as follows:

§ 2.1-116. Certain officers and employees exempt from chapter.–The provisions of this chapter shall not apply to:

(1) Officers and employees for whom the Constitution specifically directs the manner of selection;

(2) Officers and employees of the Supreme Court;

(3) Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof be required or not;

(4) Officers elected by popular vote or by the General Assembly or either house thereof;

(5) Members of boards and commissions however selected;

(6) Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public, as such;

(7) Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;

(8) The presidents, and teaching and research staffs of State educational institutions;

(9) Commissioned officers and enlisted personnel of the national guard and the naval militia, as such;

(10) Student employees in institutions of learning, and patient or inmate help in other State institutions;

(11) Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis; ~~and,~~

(12) County, city, town and district officers, deputies, assistants and employees *; and*

(13) The employees of the Department of Workmen's Compensation, Industrial Commission of Virginia .

APPENDIX X

A REPORT

FOR THE

SUBCOMMITTEE STUDYING

WORKMEN'S COMPENSATION INSURANCE (HR6)

PREPARED BY

ad hoc LAW and PROCEDURES SUBCOMMITTEE

September 15, 1980

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SCOPE OF STUDY

Background

A study of workmen's compensation insurance was begun in 1978 and continued in 1979 by the House Labor and Commerce Committee. House Resolution No. 6 authorized a continuation of the study in 1980. Delegate William T. Wilson accepted Commission of Insurance, James Newman's recommendation to use two ad hoc subcommittees for the 1980 study. This report covers the study of the ad hoc Law and Procedures Subcommittee.

Objectives

The tasks assigned to the ad hoc Subcommittee on Law and Procedures are as follows:

(1) Review the experience to date with the statutory presumptions in Section 65.1-47.1 regarding firemen, policemen, etc. and evaluate the appropriateness of the provision in the Workers Compensation Code.

(2) Review Senate Bills 256, 475, and 515 and offer appropriate comments and suggestions.

(3) Determine whether there are any problems with the manner in which Section 65.1-99.1 works and offer suggestions for change, if any.

Methodology

The ad hoc subcommittee approached its tasks in a series of meetings in which all proponents or opponents of the bills and sections of the code could present their arguments. Following these presentations, the members of the ad hoc Subcommittee discussed the issues and prepared the report in a narrative that presents the issues and the recommendations offered. A summary of those recommendations is prepared with the narrative report following.

Membership

The membership of the ad hoc Subcommittee included staff of the Bureau of Insurance and the Industrial Commission, insurance industry representatives, attorneys, and representatives of labor, business, and industry. The Appendix to this report contains a list of the members of this ad hoc Subcommittee.

SUMMARY OF RECOMMENDATIONS

1. Section 65.1 - 47.1

   Presumption as to death or disability from respiratory disease, hypertension, or heart disease.

   a. There should not be any further expansion of Section 65.1 - 47.1 to include additional employments or occupations.

   b. Because statistics for firefighters only were used in support of passage of Section 65.1 - 47.1 a review of statistics should be conducted to determine if other presently included occupations are properly entitled to such a presumption.

   c. There should be no presumption for disability resulting from a later progression of a health condition that was present prior to employment.

   d. The General Assembly should, by resolution, direct the Virginia State Fire Services Commission and the Virginia Crime Commission to actively pursue the implementation of selection, screening, and training programs to reduce disabilities.

   e. A rebuttable presumption should be allowed for all covered categories other than firefighters. Suggested wording is included with this report.

2. Section 65.1 - 99.1

   Cost of living supplements for total incapacity and dependents of deceased.

   a. An amendment to Section 65.1 - 99.1 is recommended to insure that weekly benefits for those injured before July 1 will not exceed the benefits for those injured after July 1. Suggested wording is included with this report.

3. Senate Bill 256

   To amend and reenact paragraph 51 - 152 of the Code of Virginia which provides for disability retirement of members of the State Police Officer's Retirement System.

a. Senate Bill 256 should not be passed. This one occupation should not be singled out as the only occupation to receive special treatment. Additionally, rehabilitation should be encouraged for all occupations as being in the best interest of the employee.

4. Senate Bill 475

To amend and reenact paragraph 65.1 - 68 of the Code of Virginia which provides for the division of death benefits under Workmen's Compensation Act.

Senate Bill 515

To amend and reenact paragraph 65.1 - 4 and 65.1 - 65 of the Code of Virginia which provide for payment of workmen's compensation benefits to named beneficiary of the employee.

a. Senate Bills 475 and 515 should not be passed. These bills are not supportive of the basic objectives that underlie Workmen's Compensation Laws.

b. Provision for funeral expenses under the Virginia Workmen's Compensation Act, 65.1 - 70, burial expenses when no dependents, be increased from the present $1,000 and be amended to read "not to exceed $3,000".

65.1-65 and

HISTORY OF WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

ers' compensation laws are designed to provide satisfactory means of handling occupational disabilities. A 20th century development in North America, the laws have evolved as the economy became more industrial and less agricultural.

Before these laws were enacted, a well-established common-law principle held that a master or employer was responsible for injury or death of employees *resulting from a negligent act by him.* Thus disabled workers who sued employers for damages had to prove their injuries were due to employer negligence—a slow, costly, uncertain legal process. As business enterprise and machine production expanded, the number of industrial accidents and personal-injury suits increased. At the close of the 19th century it was apparent that the accepted common-law defenses—contributory negligence, assumption of risk, negligent acts of fellow servants—operated too harshly on claims of disabled workers. The situation led to demands for new legal provisions.

As a result, between 1900 and 1910 so-called employer's liability laws were adopted by many states. Although they tended to modify common-law defenses, they did not prove completely satisfactory; employees still had to prove employer responsibility and negligence. Other legal remedies were urged.

A new answer was forthcoming: In 1911 the first workers' compensation laws were enacted in the United States on an enduring basis. The first comprehensive Canadian laws were enacted in 1915.

Today, each of the 50 states has a workers' compensation law. The compensation laws of American Samoa, Guam, Puerto Rico, and the U.S. Virgin Islands are also outlined in this *Analysis.* Federal workers' compensations laws have been enacted: for example, the District of Columbia Workmen's Compensation Act, the Federal Employees' Compensation Act, and the Longshoremen's and Harbor Workers' Compensation Act—the latter providing for private or public employees in nationwide maritime work. Each of the Canadian provinces and territories has a compensation act or ordinance.

In essence, workers' compensation laws hold that industrial employers should assume costs of occupational disabilities without regard to any fault involved. Resulting economic losses are considered costs of production—chargeable, to the extent possible, as a price factor. The laws serve to relieve employers of liability from common-law suits involving negligence.

Six basic objectives underlie workers' compensation laws. They:

1—Provide sure, prompt, and reasonable income and medical benefits to work-accident victims, or income benefits to their dependents, regardless of fault;

2—Provide a single remedy and reduce court delays, costs, and work loads arising out of personal-injury litigation;

3—Relieve public and private charities of financial drains—incident to uncompensated industrial accidents;

4—Eliminate payment of fees to lawyers and witnesses as well as time-consuming trials and appeals;

5—Encourage maximum employer interest in safety and rehabilitation through an appropriate experience-rating mechanism; and

6—Promote frank study of causes of accidents (rather than concealment of fault)—reducing preventable accidents and human suffering.

To what extent have the laws achieved desired objectives? Answers to this vary from state to state and depend on many factors including the viewpoint of the appraiser.

However, a 1972 evaluation by the National Commission on State Workmen's Compensation Laws concluded that state laws were not living up to their potential, and the Commission made 84 recommendations for the improvement of the system. Nineteen of these were labeled "essential." Despite this negative assessment, the Commission was convinced that workers' compensation is a fundamentally sound system and a valued institution in our industrial economy.

The constructive criticism rendered by the Commission gave new impetus to the development and growth of workers' compensation laws, and these laws now enjoy a more prominent role within the social insurance system of the United States. Nevertheless, it is still true that no state fully meets the 19 "essential recommendations" of the National Commission.

In January, 1976, the policy group of the Inter-Agency Workers' Compensation Task Force, with members from several U.S. government departments and agencies, reported its findings on the need for reform of state workers' compensation programs. Essentially, the Task Force found that existing programs must be reformed to bring about more effective management at the state level, with the federal government monitoring progress and providing technical assistance. The group felt that, without a reordering of priorities and a new mode of operation, workers' compensation would become more expensive, less equitable, and less effective. After completing its mission, the Task Force was merged with the Division of State Workers' Compensation Standards in the Office of Workers' Compensation Programs, Department of Labor.

The National Commission and the Task Force both rejected proposals to replace the various state programs with one federal program. Nevertheless, legislation has been introduced in the U.S. Congress for the past several years to give the federal government a direct role in the state systems by setting federally mandated "minimum standards." Although the Carter administration is on record as favoring the concept of federal standards, there has never been sufficient support for these bills to move them beyond the committee level.

1980 Edition
Analysis of Workers' Compensation Law:
Chamber of Commerce of United States

REPORT ON SECTION 65.1 - 47.1 - PRESUMPTION AS TO DEATH OR DISABILITY FROM RESPIRATORY DISEASE, HYPERTENSION, OR HEART DISEASE

House Resolution No. 6, offered January 21, 1980, requests that the Workmen's Compensation subcommittee of the House Committee on Labor and Commerce continue its study of the factors accounting for the accelerating increase in Workmen's Compensation insurance premiums, through using its ad hoc workmen's compensation committee during its study.

In considering the effect of Section 65.1 - 47.1, this subcommittee has directed its attention to two areas:

1. Prior and current claims experience
2. The appropriateness of Section 47.1

REPRESENTATIVE POSITIONS - PRO AND CON

A number of interested people have appeared at the meetings of this subcommittee to present evidence either in support of, or in opposition to, Section 47.1. Spokesmen presenting opinions for consideration by the subcommittee included Mr. Claude Staylor, Mr. William Wood, and Mr. Mike Beaulieu, City of Norfolk; Mr. Lynn Wingfield, Chesterfield County; Mr. Ted Lawson, Volunteer and Professional Fire Fighters of Virginia; Mr. Bradley Harmes, Virginia Municipal League; Mr. Gregory Berg, Connecticut Conference of Municipalities; Mr. Kenneth Lussen, Virginia State Fire Services Commission; Mr. Terence O'Brien, Fairfax County; Mr. Tim Barron and Mr. George Talcott, City of Richmond; Chief Charles Rule, City of Alexandria; Mr. Michael Conner, Alexandria Firefighters Association; Mr. Raymond Via, Virginia State Association of Professional Firefighters.

Where furnished, copies of information on these speakers' positions are included in the Appendix (Appendix C). Where available, experience is also included. The subcommittee believes that adequate statistics are available to include firefighters under Section 65.1 - 47.1 although a lack of proper controls allows marginal people to be hired.

A particularly good and effective program exists in Alexandria. Chief Charles Rule's remarks are especially pertinent to this report and are summarized below.

Chief Rule of the Alexandria Fire Department stated that as no entry level standards for firefighters exist at the state level, each locality has to establish their own standards. This has the effect of allowing employment of some marginal people, especially with regard to either physical condition, or physical capacity to perform the duties of a firefighter. Chief Rule concluded that providing presumptive coverage under Section 47.1 was reasonable, provided that proper controls were established. He presented documents to this subcommittee that detail the City of Alexandria's program for pre-employment screening, including physical examination and physical proficiency tests, as well as their program for continuing physical proficiency for employed firefighters. The Alexandria Department has had 14 disability cases awarded under Section 47.1, before their new standards were applied. (See Appendix C)

Chesterfield County, Fairfax County and the City of Virginia Beach are currently looking at Alexandria's program. Volunteer firefighters in Alexandria are currently not included under the Act, but will be, and will be subject to the same standards as paid firefighters.

Raymond S. Via, President of the Virginia State Association of Professional Firefighters, pointed out that the firefighters were the original proponents of heart-lung coverage, others being added later (ie. police officers). In support of the continuance of Section 47.1, Mr. Via strongly recommended that pre-employment and continuing employment standards (such as those established by the City of Alexandria) be implemented in all localities.

The Virginia Municipal League spoke in support of the Alexandria program, and stated that they felt they needed an "open chance" hearing on a heart-lung claim.

Lee Hollett - City of Portsmouth, stated that they have given pre-employment

physicals for 30 years, and that when certain people came under the Workmen's Compensation Act in 1976, they retired on disability. Mr. Hollett, in response to questions, stated that no cases had been challenged by them (prior to 1972 or 1973) on the basis of medical history, nor were there any respiratory or stress tests given as a part of their physical exam.

George Talcott, City of Richmond, stated that the City has approximately 101 totally disabled police and fire people, some of whom are working at some other occupation. Of the total, 37 drew disability benefits from the City Disability Retirement Program (1973 - 1976), and 64 are collecting under workmen's compensation (since 1976).

The Municipal League has surveyed member municipalities to determine total experience.

OBSERVATIONS

The subcommittee is of the opinion that if a firefighter or police officer contracts either a heart or lung-related disability on the job, it should be compensable. The State Supreme Court has interpreted Section 47.1 to be an irrebuttable presumption, in that the employer must show that a death or disability arose from an exact cause, not job related, in order to successfully defend against a claim.

A question was raised as to whether benefits payable under Section 47.1 have, in some cases, exceeded the initial legislative intent, because of the state supreme court rulings.

RECOMMENDATIONS

After extensive deliberation and discussion by the subcommittee, the following recommendations were made:

1. There should not be any further expansion of Section 65.1 - 47.1.
2. Whereas the information presented to this ad hoc subcommittee showed that the only statistics in support of Section 47.1 were those presented by the firefighters, this subcommittee recommends that the Legislature

review the other occupations presently included under Section 47.1 to see if they should properly be entitled to such a presumption; the study to be done by the Legislature.

3. A rebuttable presumption should be allowed for all categories of employees covered under Section 47.1, other than firefighters. No one should be allowed to recover benefits for a disability he had prior to employment, whether picked up on his pre-employment physical or not. See Appendix H for suggested amendment.

4. If a medical history exists; i.e. if a health condition is present prior to that person's employment, there would be no presumption for disability resulting from a later progression of the same condition.

5. As there are a number of excellent programs available that would be of immeasurable benefit to State and municipal subdivisions, dealing with employment standards, pre-employment physical examinations and physical tests, the effect of which would be to identify existing medical conditions and enhance the general physical condition and well-being of employees currently at work, and ultimately reduce the potentially large cost of providing benefits for death or disability through a preventive approach, this subcommittee recommends that the General Assembly, by resolution, direct the Virginia State Fire Services Commission and the Virginia Crime Commission to actively pursue implementation of these programs in all localities within the Commonwealth.

REPORT ON SECTION 65.1 - 99.1 - COST OF LIVING SUPPLEMENTS

This section of the Code provides for cost-of-living supplements to be paid to certain workmen's compensation claimants when the combined benefit payment under the Workmen's Compensation Code and the Social Security death or disability benefit is less than 80% of the average monthly earnings of the claimant before death or disability.

These supplements are available to recipients of awards resulting from occupational disease, accident or death occurring on and after July 1, 1975, and include total incapacity (65.1-54), total and permanent incapacity (65.1-56 [18]), disability from coal miner's pneumoconiosis (65.1-56.1 [4]), compensation from dependents (65.1-65) and compensation for dependents of coal miners (65.1-65.1). Supplementary payments are made effective on October 1 of each year and the amount of the payment is based on the percentage increase of the Consumer Price Index from one calendar year to the other.

The maximum weekly benefit amount under the Act is based on 100% of the state's average weekly wage as determined by the Virginia Employment Commission and automatically increases annually and is effective for all injuries commencing on and after July 1 (65.1-54). This criteria for determination of the maximum amount based on the state's average weekly wage is based on the recommendation of the National Commission on Workmen's Compensation.

In recent years, the Consumer Price Index has increased at a higher rate than the state average weekly wage; consequently, it is possible for claimants drawing supplementary payments under Section 65.1-99.1 to receive higher benefits than claimants injured at the present time.

The following example will indicate the present effect of 65.1-99.1 on claimants drawing supplementary benefits:

1. Effective 7/1/80 the normal maximum weekly benefit amount increased from

$199 to $213. At the same time, under 65.1-99.1, the cost-of-living increase was 13.3% and the maximum weekly benefit will increase October 1 from $199 to $225 for those injured before 7/1/80.

In this case, claimants already drawing benefits and entitled to supplementary cost-of-living payments under 65.1-99.1 would be receiving a higher benefit than those injured and qualifying after July 1.

The proposed amendment to Section 65.1-99.1 would simply put a "cap" on supplementary payments to insure that weekly benefits for those injured before July 1 would not exceed the benefits for those injured after July 1. Appendix D would accomplish this.

REPORT ON Senate Bill 256 - Disability Retirement of Members of State Police Officers' Retirement System.

Senate Bill 475 - Workmen's Compensation Benefits to Parents of Deceased Employee.

Senate Bill 515 - Workmen's Compensation Benefits to Estate of Deceased Employee

OBJECTIVE

The ad hoc Law and Procedures Subcommittee considered carefully in their deliberation Senate Bills 256, 475, and 515. The charge from the joint subcommittee studying Workers Compensation Insurance under Chairman Delegate William T. Wilson was that the Law and Procedures Subcommittee determine from their studies "Why the continual increase in Workers Compensation rates and premiums charged to employers in the Commonwealth of Virginia?"

Our study in this ad hoc subcommittee was therefore undertaken with this charge, as well as to follow the six basic objectives that underlie Worker's Compensation Laws. They are:

1. Provide sure, prompt and reasonable income on medical benefits to work accident victims, or income benefits to dependents, regardless of fault.
2. Provide a signle remedy and reduce court delays, cost and work loads arising out of personal - injury litigation;
3. Relieve private and public charities of financial drains - incident to uncompensated inductrial accidents;
4. Eliminate payment of fees to lawyers and witnesses as well as time consuming trials and appeals;
5. Encourage maximum employer interest in safety and rehabilitation through an appropriate experience - rating mechanism and;
6. Promote frank study of causes of accident (rather than concealment of fraud) - reducing preventable accidents and human suffering.

It should be pointed out that Chief Deputy Commissioner Lucian W. Hiner of the Industrial Commission of Virginia was a member of our ad hoc subcommittee. He furnished a considerable amount of information and reference material to us for our deliberation. In his position as Chief Deputy Commissioner he abstained from voting on any motions of the committee.

PURPOSE OF SENATE BILL 256

Senate Bill 256 is a bill to amend and re-enact paragraph 51-152 of the Code of Virginia which provides for disability retirement of members of the State Police Officer's Retirement System.

REPRESENTATIVE POSITIONS - PRO AND CON

The proponents of the bill indicate that it was intended to be specific and applicable only to state troopers. It was thought necessary because the former carrier of the state police workers compensation had used sections 65.1-63, Refusal of Employment, and 65.1-88, Duty to Furnish Medical Pension and Vocational Rehabilitation, as reason for denying workers compensation benefits to state policemen.

It is pointed out that the State Retirement Plan assumes that Workers' Compensation will pay in the case of an injury and the provisions of the Virginia Supplemental Retirement System (V.S.R.S.) apply otherwise.

The proponents of the Senate Bill 256 feel that specialized treatment for state policemen is justified in that state police receive specialized training and physical work is required. State police work is unique compared to all other state employment.

Additional proponents of State Bill 256 encourage its passage in that section 65.1-63 and 65.1-88 of the Code requires that medical attention must be accepted, and that an injured employee must accept work within his capacity. It was indicated that it was the purpose of Senate Bill 256 to avoid demeaning work for an employee of the State Police. It was further felt that a state policeman would be required

to do demeaning work and if he refused, he would have no coverage in the period of time in which workers compensation would ordinarily be applicable, inasmuch as a retirement plan would not provide compensation until after the nine year period.

Speaking in opposition to the bill a spokesman asked the ad hoc Subcommittee to consider the whole position. In consideration of cost containment of workers compensation, we would have to go on the presumption that other groups or specializations would want to receive the same sort of treatment. The question was posed to us as - Are you going to support rehabilitation or not? The return to constructive work is something that normally a person seeks and has been generally accepted as in the best interest of the employee. Rehabilitation is designed to restore the person to some sort of gainful employment and off the rolls of workers compensation or retirement funds. In some instances, medical opinion may find that to return a person to employment proves to be therapeutic and restores self esteem.

Discussions took place as to what is "demeaning" employment. While one person may find some employment demeaning another person may take pride in similar activities as their normal source of livelihood.

REHABILITATION

The 1976 Amendment to the Workers Compensation Code to provide for rehabilitation was thought to be a very positive and progressive approach following the recommendations of the 1972 evaluation by the National Commission on State Workmen's Compensation Laws.

The opponents felt that state police work was not all that unique and suggested that a good argument could be made for ABC investigators, firemen, city and county police and stated they felt there was perhaps a question of discrimination if such other groups were to be ignored.

RECOMMENDATION

1. The ad hoc subcommittee recommends that Senate Bill 256 be defeated.

2. The subcommittee further recommends that the Workmen's Compensation Act continue to provide rehabilitation to restore a person to some sort of gainful employment, and move off the rolls of workers compensation.

PURPOSE OF SENATE BILL 475 AND 515

The ad hoc Law and Procedures Subcommittee considered Senate Bills 475, which is a bill to amend and re-enact 65.1-68 of the Code of Virginia, which provides for the division of death benefits under Workmen's Compensation Act, and Senate Bill 515, which is a bill to amend and re-enact 65.1-4 and 65.1-65 Code of Virginia, which provides for payment of workmen's compensation benefits to named beneficiary of the employee. These bills were discussed, testimony heard, and deliberation given to them with the proponents' and the opponents' comments having a bearing on both bills.

Senate Bill 515 stipulates that "if death results from the accident within nine years, the employer shall pay or cause to be paid, subject, however, to the provisions of the other sections of this act in method hereinafter provided, to the estate of the deceased employee, a lump sum payment of $10,000." Senate Bill 475 stipulates that parents receive benefits when no dependents exist.

REPRESENTATIVE POSITIONS - PRO AND CON

Proponents for the bills indicated they were extremely concerned about the lack of benefits for youthful workers who died without dependents. Two instances were given in which young construction workers were killed by ditch cave-ins where improper shoring or no shoring had taken place. The parents, not legally dependent, received only funeral expenses.

It was further felt by the proponents that provision for benefits to non-dependent parents should be provided in the Workers Compensation Act. This seems to be the intent of Senate Bill 475 which would grant the same benefits to non-dependent parents as would be granted to dependents of deceased workers.

Proponents stated that by providing such benefits, the employer would be encouraged to more strictly enforce "a safe place in which to work for his employees". It is also felt that there needs to be compensation for a loss of a life - "it can no longer mean nothing" as said the spokesman speaking for the bills.

The proponents indicated that the exclusive remedy under Workers Compensation, that is, setting aside common law rights and remaining the only available course to be followed, should provide for this type of death claim under workers compensation. The deceased in many instances leaves obligations to others, that they had assumed in starting to work. Even though no one legally dependent upon them, there should be payment to parents or estate to pay for the obligations incurred, and to compensate for the loss of life, and invoke punitive action on the employer where the death occurred through an unsafe work place.

The opponents to the Senate Bill 475 indicated that such a bill would be difficult to administer, because of the likelihood of claim from illegitimate children, secret marriages, and perhaps others stepping forward as qualifying for payment under the code which would preclude non-dependent parents.

It would appear also that this would have the effect of substituting the Workers Compensation Act for other remedies.

It is also felt by the opponents that it would not truly act as a punitive measure to the employer because of the somewhat limited effect on the experience modification applicable under the Workers Compensation Act.

It was further thought that there is presently available to cover such matters the purchase of credit life insurance and life insurance itself. It was also felt there were remedies presently available under OSHA which provides penalty, including jail sentence to those employers who would in negligent manner cause the loss of life to an employee.

RECOMMENDATIONS

1. It is the majority opinion of the Subcommittee that Senate Bill 475 and Senate Bill 515 be rejected.
2. It is suggested by the ad hoc Subcommittee that the provisions for funeral expenses under the Virginia Workmen's Compensation Act 65.1-70 burial expenses when no dependents, be increased from the present $1,000 and be amended to read "not to exceed $3,000".

APPENDIX XI

REPORT OF THE AD HOC SUMCOMMITTEE ON THE INDUSTRIAL COMMISSION PEER REVIEW AND MANAGEMENT

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AD HOC SUBCOMMITTEE ON THE INDUSTRIAL COMMISSION PEER REVIEW AND MANAGEMENT

The following are the specific topics addressed and a summary of discussion:

I. Review legislation and make recommendations regarding House Bill 641 establishing the Workmen's Compensation Medical Peer Review Committee.

The initial organizational meeting of the central committee met on July 9, 1980. A subcommittee was appointed to establish guidelines for use of a Regional Medical Group, as well as the developments of more definitive guidelines for the appeal triggering mechanism. A complete plan of operation has now been written.

Data requirements to help the Regional Committees establish reasonable cost guidelines with regard to both specific types of treatment and duration of treatment might include the experience of private Workmen's Compensation writers, the experience of private hospitalization writers as well as the establishment of regionalized schedules of specific charges for certain types of treatment. This is not to say that there would be a fee schedule, as such, however, rather a broad base of experience from which to offer a comparison of these in a contested case.

It was brought out in discussion within the Ad Hoc Subcommittee that as

I. (Continued)

a general rule Workmen's Compensation carriers do not contest medical fees that are "slightly excessive" because to do so would require expenditures for legal fees and professional testimony; rendering such procedures as being not cost effective.

It is the opinion of the Ad Hoc Subcommittee that the format of procedures established in House Bill 641 are workable and that the Peer Review Committee should prove effective.

II. Evaluate the timeliness and usefulness of information given to claimants for Workmen's Compensation benefits by the Industrial Commission. Should the Industrial Commission develop a claims processing manual?

As an overall viewpoint it was the opinion of the Ad Hoc Subcommittee that the Industrial Commission should attempt to maintain essentially a neutral role in employer/employee relations while at the same time providing the injured party with full access to redress. In every case where a claim file is established at the Industrial Commission a claimant is sent a notice outlining his rights and duties with regard to the claim or potential claim for benefits under the Act. It was the opinion of the Ad Hoc Subcommittee that this notice was sufficiently clear and that,along with the bulletin board notice furnished to employers, was adequate for the purposes intended. It was also felt that the Industrial Commission should include with each opinion rendered a brief statement outlining the appeal procedure and the length and time in which an appeal must be requested. It should be noted that the possibility exists for an increase in the number of reviews that will have to be heard by the full commission which may in turn generate additional manpower requirements and expense.

With regard to the need for a claims processing manual, a comprehensive work is currently available at a cost of $25, entitled "Workmen's Compensation for Employers and Claimants Attorneys." This book is available from

II. (Continued)

Mr. Peter C. Manson, Continuing Legal Education Committee, School of Law, University of Virginia, Charlottesville, Virginia 22901. In addition, most of the major private Workmen's Compensation carriers in Virginia provide their insureds with pamphlets and kits outlining the procedures required to process Workmen's Compensation claims.

III. Review House Bill 792, directing the Industrial Commissi on involvement in rate hearings, and House Bill 594, which exempts the Industrial Commission from the State Personnel Act.

A majority of the Ad Hoc Subcommittee was of the opinion that the Industrial Commission should play an impartial role and should not participate directly in rate hearings. A minority opinion should be noted to the effect that past rate hearings would have benefited greatly from the active participation and input from the Industrial Commission. A possible middle ground approach could be reached through the establishment of a liason between the Bureau of Insurance and the Industrial Commission, in order to better coordinate and evaluate the need for pertinent statistical information.

With regard to House Bill 594, it was the consensus of the Ad Hoc Subcommittee that the Industrial Commission should begin to undertake those steps which will enable it to be exempt from the State Personnel Act. It is felt that exemption from the Act will permit the Commission to hire more qualified staff. The Industrial Commission may begin by hiring a professional personnel officer, and that this officer should then seek to establish a program of procedures and benefits commensurate with other state agencies. The question of management reorganization within the Industrial Commission was addressed in great detail in the organization and management study prepared by the Department of Management Analysis

III. (Continued)

and Systems Development. The Ad Hoc Subcommittee would like to note that the implementation of many of the concepts outlined in this study is a desirable prerequisite to the removal of this agency from the State Personnel Act.

IV. Make recommendations regarding the role of the Industrial Commission relating to (i) the collection, maintenance and analysis of statistics on Workmen's Compensation and (ii) vocational rehabilitation of injured workers.

It is the understanding of the Ad Hoc Subcommittee that methods in accounting procedures are being established to enable the Industrial Commission to begin a more detailed compilation of such statistics to be coordinated with the Bureau of Insurance and the State Corporation Commission. By October statistics will be available from January 1, 1980 forward. These statistics will include: total cases established and closed; by type, permanent total, permanent partial and temporary total disability; dollar amounts paid broken down into hospital, rehabilitation and all other medical; number and dollar amounts paid broken down by nature of industry, type of injury and part of body. These statistics will be summarized to establish averages.

It is the consensus of the Ad Hoc Subcommittee to support the recently announced cooperative effort between the Department of Rehabilitative Services and the Industrial Commission to establish referral procedures for the handling of vocational rehabilitation cases. These procedures are to become effective September 1, 1980. Copy of the referral procedures is attached. This is a one year pilot program and the results are to be audited. It is the opinion of the Ad Hoc Subcommittee that these procedures will place

IV. (Continued)

the Industrial Commission in a more active role with regard to the ultimate disposition of cases involving the need for vocational rehabilitation.

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A BILL to amend and reenact § 65.1-47.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 65.1-47.2, providing presumptions as to the death or disability of law-enforcement officers and fire fighters from certain diseases.

Be it enacted by the General Assembly of Virginia:

1. That § 65.1-47.1 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 65.1-47.2 as follows:

§ 65.1-47.1. Presumption as to death or disability of law-enforcement officer from respiratory disease, hypertension or heart disease.--The death of, or any condition or impairment of health of ~~a salaried or volunteer fire fighters caused by respiratory disease, and the death of, or any condition or impairment of health of, salaried or volunteer fire fighters, or of~~ any member of the State Police Officers Retirement System, or of any member of a county, city or town police department, or of a sheriff, or of a deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, caused by hypertension or heart disease, resulting in total or partial disability shall be presumed to be an occupational disease suffered in the line of duty that is covered by this act unless the ~~contrary be shown~~ Commission finds by a preponderance of competent evidence that such condition or impairment did not

arise out of such employment ; provided that prior to making any claim based upon such presumption, ~~such salaried or volunteer fire fighter shall have been found free from respiratory disease, hypertension or heart disease, as the case may be, or~~ such member of the State Police Officers Retirement System, or such member of a county, city or town police department, or such sheriff, or such deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, shall have been found free from hypertension or heart disease, as the case may be, by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the appointing authority or as the governing body employing such person, in the case of a sheriff or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, the county or city of which he is sheriff or deputy sheriff, shall prescribe and which shall have been conducted by physicians whose qualifications shall have been prescribed by such appointing authority or by such governing body; and provided further, that any such ~~fire fighter~~ law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, or, in the case of his death, any person entitled to make a claim under this act, claiming the benefit of such presumption shall, if requested by such appointing authority or by such governing body or its authorized representative submit himself, in the case of a claim for disability benefits, to physicial examination by any physician designated by such appointing authority or by

such governing body which examination may include such tests or studies as may reasonably be prescribed by the physician so designated or, in the case of a claim for death benefits, subsit the body of the deceased ~~fire fighter~~, law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, to a postmortem examination to be performed by the medical examiner for the county, city or town appointed under § ~~32-311.10~~ 32.1-282. Such ~~fire fighter~~, law-enforcement officer, sheriff, or deputy sheriff, or city sergeant or deputy city sergeant of the city of Richmond, or claimant shall have the right to have present at such examination, at his own expense, any qualified physician he may designate.

§ 52.1-47.2. Same; fire fighters.--The death of, or any condition or impairment of health of, salaried or volunteer fire fighters caused by respiratory diseases, hypertension, or heart disease, resulting in total or partial disability shall be presumed to be an occupational disease suffered in the line of duty that is covered by this act unless the contrary be shown by a preponderance of competent evidence; provided that prior to making any claim based upon such presumption, such salaried or volunteer fire fighter shall have been found free from respiratory diseases, hypertension or heart disease, as the case may be, by a physical examination which shall include such appropriate laboratory and other diagnostic studies as the appointing authority or as the governing body employing such person shall prescribe and which shall have been conducted by physicians whose

qualifications shall have been prescribed by such appointing authority or by such governing body; and provided further, that any such fire fighter or, in the case of his death, any person entitled to make a claim under this act, claiming the benefit of such presumption shall, if requested by such appointing authority or by such governing body or its authorized representative submit himself, in the case of a claim for disability benefits, to physical examination by any physician designated by such appointing authority or by such governing body which examination may include such tests or studies as may reasonably be prescribed by the physician so designated or, in the case of a claim for death benefits, submit the body of the deceased fire fighter to a postmortem examination to be performed by the medical examiner for the county, city or town appointed under § 32.1-282. Such fire fighter or claimant shall have the right to have present at such examination, at his own expense, any qualified physician he may designate.

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II. DEFINING THE ROLE OF THE INDUSTRIAL COMMISSION IN THE RATE MAKING PROCESS.

In its original report, the stated position of the Ad Hoc Subcommittee was that the Industrial Commission is, and should remain, an impartial body primarily judicial in nature. A restudy of the Industrial Commission's role in the rate making process has only served to reinforce our original conslusions. Direct participation in the rate making process could lead to an adversary role that makes judicial neutrality in workmen's compensation cases difficult, as the June, 1980 MASD study has pointed out. The report also pointed out that only Ohio, of six states surveyed, had their workmen's compensation department participate in the rate hearings. It should be noted that Ohio has a monopolistic state fund for workmen's compensation.

The Industrial Commission has begun, as of January 1, 1980, to collect certain statisitical data on closed claims, which will ultimately give us some interesting figures, such as total numbers of claims, injury types, average medical, average indemnity; annual totals of medical and indemnity, permanent partial, permanent total or temporary total. They could provide other data such as increase in the number of controverted cases. After several years' data are compiled and categorized, we could have a comparison of cost movement from one year to another. All of this is certainly informative, but could not be used as a meaningful comparison against rate making figures used by the insurance industry, with a view toward deciding whether the industry's rates were too high or too low.

That function is more than adequately handled by both the Virginia Bureau of Insurance and the various opposing participants in the public rate hearings. The Bureau of Insurance is charged with the responsibility of regulating insurance rates. They, as do the various opponents, such as the Virginia Manufacturers' Association and the Associated General Contractors of Virginia, make use of professional actuaries to study the rate making data presented, and comment as to the actual and theoretical reliability of the data. There is a great deal more than paid loss data that goes into the rate making process. Other factors such as reserves (open claims), projected valuations (projected values and reserves are up-dated every 12 months after the initial valuation), and loss adjustment expense. Also incorporated are certain trend factors including: inflationary effects on payrolls, medical costs and indemnity benefits, changes in claim frequency, changes in the level of business activity in Virginia, and the changes in law and benefits on rate

levels. Most of this information is not collected by the Industrial Commission, and the ultimate comparison would be logically inconsequent.

The data developed by the insurance industry are verified in detail by both the National Council on Compensation Insurance and the Virginia Compensation Rating Bureau. In addition, the Bureau of Insurance, either directly, or in conjunction with a Commissioner's Zone Audit can, and does, verify these data on a sampling basis.

Because of the ready availability of accurate data already being reviewed by the Bureau of Insurance and others, it would be redundant to have the Industrial Commission perform essentially the same function and present their findings during the rate hearings.

A majority of this committee feels that a mechanism is already in place to allow the Industrial Commission's participation in rate matters under Section 65.1-117 of the Workmen's Compensation Act, by furnishing, on a cooperative basis, any agreed-upon data to the Bureau of Insurance that are needed. This obviates the need for House Bill No. 792. Perhaps some refinement of this section can more clearly fix the obligations of the Industrial Commission to furnish data, but that should be left to the Bureau of Insurance and the Industrial Commission to decide, through a permanent liaison arrangement between the two bodies. This committee's detailed discussions with both the Industrial Commission and the Bureau of Insurance, reveal no prior instances where information requested was not given. It should be remembered that the Bureau of Insurance is the regulatory body.

We would comment that were the Industrial Commission directed to compile data parallel to that furnished by the insurance industry, the ultimate cost factor to the taxpayers would be excessive; involving staff, space, files, and an extensive updating of their automated data base, and would merely be a costly duplication of service already available, and already verified. In addition, it would be three years hence before the Industrial Commission would be in a position to match even some of the data used in rate filings. The 1980 rate filings included, as is customary, three years of individual employer policy data, commonly referred to as unit statistical data, the latest year being 1977/78. However, it is important to remember that unit statistical data is not used in determining the overall amount of rate or premium level requested by the industry in a rate filing.

This restudy represents the majority opinion of the study committee members,

who, as you know, are composed of a cross-section of employers, insurance representatives, regulators, labor and others. Your Subcommittee may wish to seek individual testimony from those holding a minority opinion.

Appendix XV

THE VIRGINIA WORKMEN'S COMPENSATION ACT OF 1980

QUESTIONS AND ANSWERS

I. WHAT IS WORKMEN'S COMPENSATION?

It is an insurance program that pays medical and disability benefits for accidental injuries arising out of and in the course of employment and/or occupational diseases. Most employers obtain coverage by purchasing an insurance policy; however, most employers pay benefits from their own funds. These employers, called self-insurers, must prove that they are financially secure enough to pay full benefits for any injuries to their employees.

Workmen's Compensation protects both employees and employers. Each covered employee has a right to benefits if injured on the job. In return he or she forfeits the right to sue the employer for job-related injuries.

II. WHO IS COVERED?

The Virginia Workmen's Compensation Act requires any employer who has three or more regular employees to furnish Workmen's Compensation coverage at no cost to his employees. There are only two exceptions to this rule: (1) Farmers must provide coverage if they have five or more full-time employees or an annual payroll of $15,000, regardless of the number of employees; and (2) domestic workers are not covered.

III. HOW AND WHEN DO I REPORT AN ACCIDENT?

You are required to report in writing immediately any work-related injury preferably to your foreman or supervisor. Failure to do so may result in loss of compensation and payment of medical expenses. Upon report of an accident the employer must fill out the Employers First Report of Injury form, and send a copy of this report to the Industrial Commission and to the insurance company within 10 days of the accident.

IV. WHAT ARE THE BENEFITS?

A. MEDICAL EXPENSES.

You are entitled to receive from your employer or your employer's insurance company, all necessary medical treatment for your work-related injuries or occupational disease. At the time of the injury your employer must provide you with a panel of three doctors from which you may select the treating doctor. All medical treatment rendered by the treating doctor, or those to whom you are referred by the treating doctor, will be paid for by your employer or your employer's insurance company. If you select your own doctor for treatment rather than choosing from the panel, you must pay this expense yourself.

B. DISABILITY BENEFITS.

1. Temporary total disability. If you cannot work because of a work-related injury or disease, you are eligible for temporary total

disability benefits. Generally this inability to work must be confirmed by a physician. Compensation begins with the eighth (8th) day of incapacity and is not payable for the first seven (7) days unless the disability exceeds three (3) weeks. These payments continue until your physician releases you to return to work or decides that your condition has reached the point of maximum improvement. You are entitled to receive two-thirds of your average weekly wage, but not more than $213 per week, for time lost from work. These benefits may not be paid for more than 500 weeks.

2. Temporary partial disability. If you recover from a work-related injury to the point that you can return to light or part-time work, but, because of your injury are not earning as much as you were before the injury, you are entitled to recover two-thirds of your wage loss, not to exceed $213 per week.

3. Permanent partial disability. If your injury or illness results in loss of or loss of use of certain members of the body, you are entitled to a certain number of weeks of compensation determined by applying the percentage of disability to the number of weeks designated in the law for a 100% disability to that part of the body. If you are still disabled after receiving all payments for permanent disability, you may be entitled to additional compensation for work incapacity.

   The following are the number of weeks of compensation for total loss of the particular part of the body:

Loss of a thumb	60 weeks
Loss of a first finger or index finger	35 weeks
Loss of a second finger	30 weeks
Loss of a third finger	20 weeks
Loss of a fourth finger	15 weeks
Loss of great toe	30 weeks
Loss of any other toe	10 weeks
Loss of hand	150 weeks
Loss of arm	200 weeks
Loss of foot	125 weeks
Loss of leg	175 weeks
Loss of eye	100 weeks
Loss of hearing in one ear	50 weeks
Severely marked disfigurement	60 weeks

   There is no back or general bodily disability rating.

   The Act also provides for specific weekly benefits for certain occupational diseases that are directly related to the employment and are not ordinary diseases of life. The amount of compensation will vary according to the type and degree of the work-related disease.

4. Permanent total disability. You are entitled to compensation and medical expenses for life if you lose both hands, both arms, both feet, both legs, both eyes, or any two thereof, in the same accident, or suffer total paralysis or a brain injury resulting in insanity.

5. Rehabilitation. If you suffer disablement from an occupational disease or an injury and you are unable to perform work for which you have previous experience or training, or other suitable employment, because of the effects of an occupational injury or disease, you may be entitled to such vocational rehabilitation training services, as may be reasonably necessary to restore you to suitable employment. Your employer is obligated to furnish, and you are obligated to accept, all reasonable and necessary rehabilitation training services. Your unjustified refusal to accept such services may result in suspension of compensation payments.

C. DEATH BENEFITS.

If an injury or occupational disease results in death, compensation is payable to your widow, widower, minor children or others who are dependents at the time of death. The amount of compensation is two-thirds of the deceased employees average weekly wage, but not more than $213 per week, to be paid during the period of dependency, but not to exceed 500 weeks.
In addition, up to $1,000 is paid toward burial expenses plus an allowance of up to $300 for transportation of the body.

D. COST OF LIVING SUPPLEMENTS.

Each year the Industrial Commission must determine the percentage of the cost of living increase based on the average U. S. Consumer Price Index for the prior year ending in July. Effective October 1, for the next year open awards are increased by this percentage or up to where the employees or dependents Social Security disability benefit and his compensation payment equals 80% of the monthly wage. These supplements apply only to awards for total incapacity or for dependents in fatal claims.

V. HOW DO I OBTAIN BENEFITS?

Report the accident in writing to your employer or supervisor immediately. Ask him to fill out the Employers First Report of Injury form. Make sure that your employer knows what, where, when and how the accident happened, enough information so that he can arrange medical treatment and complete the necessary reports.

Prompt reporting is the key. Nothing can happen until your employer knows about the accident. Ensure your right to benefits by reporting every accident, no matter how slight. Remember, an insurance company or self-insurer is not required to make any payments under Workmen's Compensation until an award is entered by the Industrial Commission. The Industrial Commission usually requires a First Report of

Injury form, an Attending Physician's Report, and a Memorandum of Agreement signed by you and the insurance company or employer.

Approximately 93% of all claims are handled by agreements reached between the employee, the insurance company and the employer. All such agreements are subject to examination and approval by the Industrial Commission prior to the entry of an award. If you are presented with an agreement and do not understand it, do not agree with it, and do not get an adequate explanation from the insurance company or employer, you should contact the Industrial Commission.

VI. WHAT IF MY EMPLOYER DOES NOT FILE A REPORT: HOW DO I APPEAL AN AWARD?

If your employer does not report your accident, denies your claim or if you can prove that you did not receive all the benefits to which you are entitled, you may file an application for hearing either by writing a letter to the Industrial Commission stating the basis of your claim or by using the form provided by the Industrial Commission. It is your obligation to file your own claim. The employer or insurance company has no obligation to do this for you. The filing of reports by the employer does not constitute the filing of your claim. If you claim an accidental injury, your application for a hearing must be received by the Industrial Commission within two (2) years of the date of the accident. If you are claiming an occupational disease, your application must be received by the Industrial Commission within two (2) years after a diagnosis of an occupational disease is first communicated to you or within five (5) years from the date of the last injurious exposure in the employment, whichever comes first. Special time limits apply to coal workers pneumoconiosis (black lung) and certain other unusual occupational diseases. Hearings are held before a commissioner or deputy commissioner in the county or city where the accident occurred, or one nearby. Hearings are usually held within six (6) weeks from the date an employee or employer files an application for hearing with the Industrial Commission. Written decisions are usually received within two (2) weeks following the hearing.

Whether or not you are represented by an attorney is a matter of your choice. If an attorney is hired, the attorney should be consulted as soon as possible to handle the filing of your application for a hearing and medical report. You should be aware that except in certain instances your attorney's fee will come out of any award that you may receive. Attorneys' fees are set by the Industrial Commission. Even though you do not have an attorney you will be held to the same standard of proof including, but not limited to, medical reports and the testimony of witnesses.

If you wish to contest the award rendered after the initial hearing, you must file a written request for appeal within 20 days of the award. Your case will then be reviewed by the full commission and an opinion rendered. No additional evidence can be submitted at this review. If you then wish to appeal the award rendered by the full commission, you must file your appeal to the Industrial Commission within 15 days, and file a writ to the Supreme Court of Virginia within 30 days. You will need an attorney for this procedure. Failure to file requests for appeal for any of the above mentioned hearings within the stipulated time limits will eliminate the possibility of any further review or consideration of your case.

VII. WHO ADMINISTERS THE VIRGINIA WORKMEN'S COMPENSATION ACT?

The Virginia Workmen's Compensation Act is administered by the Industrial Commission of Virginia, located in the Jefferson Building, Governor and Bank Streets, Richmond, Virginia. The mailing address is P. O. Box 1794, Richmond, Va. 23214. Telephone 804 786-3618.

The information contained in this brochure is general in nature and is not intended as a substitute for legal advice. Changes in the law or specific facts of your case may result in legal interpretations which are different than presented here. If you have further questions after reading this brochure, please contact the Industrial Commission of Virginia at the address and phone number stated above.

§ 65.1-117. Rates; cooperation between Corporation Commission and Industrial Commission. — Authority is hereby conferred upon the State Corporation Commission to make such arrangements with the Industrial Commission as may be agreeable to the Industrial Commission, for collecting, compiling, preserving and publishing statistical and other data in connection with the work of regulating workmen's compensation insurance rates and for the division of the expenses thereof, to the end that duplication of work and expenditures may be avoided. Whenever it deems proper, with the consent of the Industrial Commission, the State Corporation Commission may appoint members of the Industrial Commission, or its employees, as special agents of the State Corporation Commission to take testimony and make reports with reference to any matter involving questions of workmen's compensation insurance rates. (Code 1950, § 65-113; 1968, c. 660.)