

THE WORKERS' COMPENSATION
STUDY COMMISSION OF 1977-79
AND ITS IMPACT ON WORKERS'
COMPENSATION LEGISLATION

DOUGLAS P. SEATON
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STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES
RESEARCH DEPARTMENT
17 STATE CAPITOL
ST. PAUL, MINNESOTA 55155

PREFACE

Minnesota's workers' compensation system provides medical expense reimbursement and income-replacement benefits for virtually every employee suffering a work-related disability. Employers must provide workers' compensation insurance or self-insure to pay these benefits and the annual premiums which they pay total nearly \$500,000,000. There are almost 60,000 claims for some type of workers' compensation benefits every year.

Minnesota was one of the pioneers of statutory compensation for industrial accidents in 1913. But in the past few years there has been considerable criticism of the workers' compensation system, though the basic structure of the system is unchallenged. Critics complain that costs have become a serious problem for business in the state and that appropriate benefits could be provided at much less expense.

In 1977 the Legislature created the Workers' Compensation Study Commission to investigate the problems with the workers' compensation system and recommend changes. After an intensive two year effort that body recommended 57 reforms, most of which were enacted into law in 1979. Those changes represent the most significant reform of the industrial accident compensation system in several decades.

Knowledge of these changes and their impact is vital for an understanding of workers' compensation issues. Debate over workers' compensation continues, of course, but it is certain that any further efforts to improve the system will begin with the 1979 Workers' Compensation Act and the Study Commission report, upon which it was based. This report on the work of the Workers' Compensation Study Commission, its recommendations, the legislative debates over those recommendations and the resulting legislation should thus be of considerable assistance to legislators as they evaluate further proposals for reform of the workers' compensation system.

This report was written by Douglas P. Seaton, Legislative Analyst in the Minnesota House of Representatives Research Department. Questions or comments on the issues raised in this report or on other employment-related issues should be addressed to Mr. Seaton at 296-5059.

Peter B. Levine, Director
Minnesota House of Representatives
Research Department

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I. INTRODUCTION AND SUMMARY OF THE MAJOR 1979 REFORMS

During the 1979 extra session of the Minnesota Legislature, a series of major revisions to the workers' compensation statute were enacted.¹ This legislation² was the culmination of a two-year study by the Workers' Compensation Study Commission. The Commission's recommendations, most of which were enacted, represented an effort to respond to the concerns of all constituencies affected by the workers' compensation system. Since nearly all employees and employers are subject to the workers' compensation system, and since the legal, medical, and educational professions are intimately involved in its administration, the impact of the new legislation will be felt by most Minnesotans.³

The workers' compensation statute is amended nearly every session, but the changes in 1979 were more sweeping than any since 1937, when the employer's option to choose tort liability instead of liability under the statute was repealed.⁴ The retraining and rehabilitation provisions of the new legislation entirely replaced those of the old statute.⁵ In addition, a mandatory reinsurance association and a new reopened case fund were created.⁶ Though a provision creating a state-operated workers' compensation insurance company was deleted from the bill, another commission was charged to study the feasibility of such a fund.⁷ The workers' compensation insurance rate-making and regulatory sections were entirely rewritten

and rate hearings were brought under the contested-case provisions of the Administrative Procedure Act.⁸ The self-insurance program was modified substantially and transferred to the insurance division.⁹ A number of benefit provisions were amended and several changes affecting medical services and opinions also were made, including a second surgical opinion program.¹⁰ Furthermore, several changes will affect workers' compensation attorneys.¹¹ A great many additional changes were made to improve the administration of the workers' compensation system.

The investigation conducted by the Workers' Compensation Study Commission was very comprehensive. The resulting legislation made many significant changes in the system of industrial accident compensation in Minnesota which merit a comprehensive review. In addition, the lengthy discussions over workers' compensation in the Workers' Compensation Study Commission and the 1979 Legislature have helped to shape the terms of the debate over workers' compensation generally, including those issues not addressed by the 1979 legislation. A review of the work of the study commission and the resulting legislation should thus illuminate current - or future - areas of controversy in workers' compensation. The purpose of this report is to examine the recommendations of the Workers' Compensation Study Commission and the provisions of the 1979 legislation and to assess their impact both upon the workers' compensation system itself and the debate over workers' compensation reform.

II. THE WORKERS' COMPENSATION STUDY COMMISSION

The Minnesota Workers' Compensation Study Commission (WCSC) was created by the 1977 Legislature.¹² The WCSC interpreted its charge as a broad mandate to consider any changes that might reduce workers' compensation costs.¹³ The creation of the WCSC and the legislation of 1979 were spurred by several events. Workers' compensation costs in Minnesota had risen dramatically since the early 1970's. These expenses had become an increasing burden on employers. Since workers' compensation costs were significantly lower in several of Minnesota's neighboring states, these costs became a major "business climate" issue in the 1978 elections.¹⁴ The origins of these increased costs were examined by the WCSC, but no definitive conclusions were reached. Some attributed the increase to what was said to be the "liberal" direction of both new legislation and judicial interpretation of the statute since 1973.¹⁵ Thus, there was pressure for change in the rules of liability, benefit levels, and even in the composition and powers of the workers' compensation courts. Others argued that the cost increases were caused by excessive administrative costs and profits among insurers.¹⁶ The policy this faction sought to implement included new restrictions on insurers, increased regulatory powers, and a combination of more private competition, increased self-insurance, or a new state workers' compensation insurance company.¹⁷ Another view attributed increased costs to inefficiencies in the administration of the law, poor information, inadequate claim processing and rehabilitation services,

and unnecessary litigation.¹⁸ The program suggested by this group stressed quick service for the claimant, better information, speedier resolution of disputes, better rehabilitation services, and fewer incentives to litigate.¹⁹ Each of these perspectives was considered during the deliberations of the WCSC and each was, to some degree, reflected in the final legislation. In addition, the work of the National Commission on State Workers' Compensation Laws had an influence upon the WCSC and the final legislation.²⁰

In summary, a history of legislative changes generally favorable to the employee and relentless increases in premium costs formed the backdrop for the deliberations of the WCSC. The core agenda of the WCSC, therefore, was not whether to cut costs, but simply how to do so.

The members of the WCSC were appointed in August, 1977 and the Commission held its first meeting on September 1, 1977.²¹ The WCSC was chaired by Senator Steve Keefe, who gavelled forty WCSC meetings to order between September 1977 and February 1979.²² At its final meeting, the WCSC approved fifty-seven recommendations for legislative or administrative action and concluded its work by issuing a 320 page report explaining the recommendations and examining twenty-one separate workers' compensation subject areas.²³ Sixteen minority recommendations from the WCSC also appeared in the report.²⁴

A. The Concerns of the Constituencies Affected by Workers' Compensation Legislation

The recommendations of the WCSC do not readily fall into any particular legal theory of employment disability compensation.²⁵ While the WCSC seriously studied the issues within its purview, it did not conduct itself merely as an academic study group, still less as a court. Instead, the WCSC was a political body, in the sense that its deliberations represented an attempt to respond to dissatisfaction with the workers' compensation system and to impose the burdens of reform equitably on each affected group. This was far from an easy task, given the divergent perspectives that existed.

Employers voiced concern to the WCSC over premium increases, inadequate rehabilitation, high benefits, impediments to self insuring, "liberal" administration of the law by the courts, malingering claimants, insufficient service by insurers, lack of information from both insurers and the Department of Labor and Industry, and the disproportionate impact of cost increases on small business.²⁶ Labor focused on preventing reductions in benefit levels and on raising the maximum benefit.²⁷ Employee representatives favored expansion of joint self-insurance by groups of employers and a state-run workers' compensation insurance company, as well as increased regulatory authority for the Commissioner of Insurance.²⁸ Both employers and labor tended to agree on the necessity for increased procedural formalities and broader participation in the rate hearings.²⁹

The insurance industry was on the defensive throughout the deliberations of the WCSC, since labor and employers in varying degrees

attributed increased premium rates to the insurers' inefficiency and "excess profits". The representatives of the insurance industry nonetheless sought to reduce the large amounts and long periods of potential liability arising from each injury, arguing that these, and expanded benefits, were the reasons for the increase in premium levels.³⁰ Medical practitioners were also in a reactive position, especially regarding the issues of second medical opinions, disability schedules, neutral medical testimony, rehabilitation, and fee limitations.³¹ Attorneys were divided between the plaintiffs' and defense bar, and their viewpoints generally followed those of their clients. Attorneys focused on the rules of liability, benefit levels, settlement procedures, fees, rehabilitation, apportionment of liability, and the several proposals affecting medical evidence and fact finding.³²

B. The Recommendations of the WCSC

The fifty-seven recommendations of the WCSC were adopted in outline form in the two penultimate sessions of the WCSC, though nearly all were the subject of extensive testimony and staff work during the previous two and one-half years. The first thirteen recommendations dealt with benefits.³³ Eight recommendations were intended to prevent the receipt of overlapping or excessive benefits. Claims for both retraining and temporary total or other weekly benefits, or for permanent partial benefits, were to be denied, but benefits were to be increased uniformly by fifteen percent in retraining situations.³⁴ In addition, as an incentive to return to work, permanent partial benefits were to be withheld until employment resumed.³⁵ The third WCSC recommendation was that the minimum temporary total benefit be repealed so that no employee would receive benefits in excess of the usual sixty-six and two-thirds percent of his wages.³⁶ Other recommendations permitted recovery of benefits paid by mistake³⁷ and required reduction of

benefit amounts when a previously compensated disability contributed to the new injury.³⁸ Recommendations 8 and 9 provided for a specific schedule of benefit amounts for internal organ injuries³⁹ and removed the presumption that certain peace officers' conditions were work related.⁴⁰ The most significant benefit reduction was Recommendation 7, which limited inflation adjustments to claims at least two years old.⁴¹

While these recommendations would reduce costs, four other benefit recommendations would tend to increase costs. The most significant of these was the proposal to increase the maximum benefit payment from 100% to 200% of the statewide average weekly wage.⁴² The other three benefit increases provided that a student could receive survivor benefits to age twenty-five,⁴³ extended mandatory workers' compensation coverage to elected and appointed public officials,⁴⁴ and required currently due benefits to be paid to relatives after the unrelated death of an injured employee.⁴⁵ WCSC Recommendation 10 extended the irrebuttable presumption of dependency for wives of deceased employees to husbands, but limited its application to two years from the injury, after which time fifty percent of any earned income would be subtracted from death benefits.⁴⁶ Recommendation 40 also indirectly affected benefits by limiting the potential for duplicative recoveries by the injured worker from fellow employees to cases of intentional or grossly negligent acts.⁴⁷ Recommendation 57, also relating to benefits, provided that pain should continue to be considered in determining proportional disability.⁴⁸

Recommendation 14, the most detailed, involved a systematic revamping of workers' compensation retraining and rehabilitation procedures. The essential features of this proposal were its stress on employer-provided

rehabilitation and on-the-job training, specific procedures for approval of rehabilitation plans and rehabilitation providers, central administration of the rehabilitation system by the Department of Labor and Industry, and clear allocation of specific costs of rehabilitation to the employer.⁴⁹

Recommendations 15 through 28 involved the administration of the workers' compensation statute by the Department of Labor and Industry and the workers' compensation courts.⁵⁰ Three recommendations dealt with notice by the employee and employer of the fact of injury. These were intended to accelerate the processing of claims by requiring employer notice to the insurers,⁵¹ providing that routine medical carrier treatment forms are not notice of a work-related injury when work-relatedness is not indicated,⁵² and exempting severely incapacitated employees from the 180 day notice requirement.⁵³ Recommendation 41 also provided for a preliminary notice by employees to employers when changes in benefits were sought.⁵⁴

Several recommendations considered changes in the workers' compensation courts. Recommendation 25 mandated expansion of the Workers' Compensation Court of Appeals from three to five members, two representing employers, two representing employees, and one representing the public.⁵⁵ Two members could be nonattorneys.⁵⁶ Another recommendation provided that the appeals court be physically separate from the offices of the Department of Labor and Industry,⁵⁷ and the last, permitted consideration, in the judge's discretion, of an attorney's workers' compensation expertise in fee determination.⁵⁸

Recommendations 29 and 47 were both responses to the problem of the "long tail" in workers' compensation liability.⁵⁹ The extensive duration and potential expense of liability for individual injuries exacerbates cost

pressure because insurers, under standard actuarial procedures, must anticipate this potential future expense by reserving the necessary funds in the present. The WCSC responded by recommending the creation of two new funds: the Reopened Case Fund and the Reinsurance Fund. The two funds were designed to limit the exposure of insurers to definite time periods without imposing a short statute of limitations on claims. The Reopened Case Fund was to be responsible for benefits when a claim was reopened after seven years from the injury or three years from the last benefit payment, with a final statute of limitations eighteen years after the injury or eight years after the last payment, whichever date was later.⁶⁰ The Reinsurance Fund was to be responsible for payments on claims that continued for five years after the date of injury, without time limitation.⁶¹ The Reopened Case Fund would be funded by a flat assessment on premium, as is done with the Special Fund,⁶² while the Reinsurance Fund would be funded by premiums to be paid by insurers and self-insurers.⁶³

Recommendations 30 through 33 affected the Special Fund, which pays benefits when certain preexisting conditions are aggravated by a work injury.⁶⁴ The WCSC proposed removal of the requirement that employers register an employee's preexisting condition before the aggravating second injury occurs⁶⁵ and recommended that investment income to monies in the fund be retained rather than be directed to the general fund.⁶⁶ The liability of the fund was also to be extended to aggravation of any previous injury when the employee was enrolled in an on-the-job training program.⁶⁷ The fund would also pay any benefits due on a claim when liability between insurers or employers was disputed, and be reimbursed after that determination.⁶⁸

The WCSC made several medical recommendations.⁶⁹ One provision was that either party have the right to a neutral physician's evaluation of

the medical issues.⁷⁰ Another recommendation was that a second medical opinion should be required before certain elective surgical procedures are used.⁷¹ A related recommendation was that health insurance carriers provide medical treatment when disability was disputed between the health and workers' compensation carriers, with reimbursement if workers' compensation liability was established.⁷²

Recommendations 37 through 39 and 42 through 57 relate to the rate-making process and the regulatory role of the Commissioner of Insurance in that process.⁷³ Additional professional staff were to be provided to the Commissioner⁷⁴ and the salary ceiling in effect for the actuary's position was to be removed.⁷⁵

Among the last recommendations were several that addressed specific rate and classification practices. Many of these were recommendations to the Commissioner of Insurance, rather than proposals for statutory action. The traditional insurance practice of allocating cost increases due to changes in benefit levels back to the period of premium coverage was to be halted⁷⁶ and replaced by a premium increase to take effect the same date as the benefit changes, January 1 of each year.⁷⁷ The WCSC also concluded that employers should be permitted to divide an individual employee's wages between different rating classifications when different duties were involved so an employer could take advantage of lower rates in one of the classifications.⁷⁸ One proposal, designed to assist small employers, provided that the experience-rating system of modifying premiums be extended to those paying less than a \$750 annual premium.⁷⁹ Another recommendation sought to provide some workers' compensation relief to employers who paid higher wages than others in the same industry by establishing a minimum wage base for calculation of premiums, as with social security.⁸⁰

Another group of WCSC recommendations affected the manner in which case reserves and claim expenses were handled by insurers. The WCSC recommended that the Commissioner of Insurance require insurers to utilize life expectancy tables that are modified to take account of disabilities.⁸¹ Similarly, the filing of additional details about claim reserves⁸² and the reporting of every claim reserve above \$50,000 were recommended.⁸³ Recommendation 56 provided that investment income on reserves be considered in establishing premium rates.⁸⁴ Another recommendation was that insurance company administrative expenses for assigned-risk pool premiums and for regular premiums be equalized to avoid any incentive to deny regular coverage.⁸⁵

The WCSC also recommended several changes in the regulatory role of the Commissioner of Insurance and in the rate-making and classification determination processes. Recommendation 49 sought proposals from the Commissioner of Insurance to the Legislature on the appropriate manner of conducting the rate hearings themselves.⁸⁶ Another procedural recommendation provided for employer appeal from an occupational classification determination by the Rating Association.⁸⁷ Recommendation 44 permitted the Commissioner of Insurance, during the rate-making process, to review the propriety of any automatic premium increase generated under Recommendation 43.⁸⁸

There were a number of minority recommendations endorsed by different members of the WCSC.⁸⁹ One of the most controversial was a proposal for the creation of a nonprofit, state-run workers' compensation insurance company that would compete with private workers' compensation insurance carriers.⁹⁰ The WCSC itself had declined to recommend such a "state fund".⁹¹ Other minority recommendations that responded to WCSC proposals included opposition to the Reinsurance Fund,⁹² proposals for apportionment of liability when a previous condition contributed to a new disability,⁹³ reduction of permanent partial benefits for workers over age

fifty-two,⁹⁴ and retention of the state average weekly wage as a workers' compensation benefit maximum.⁹⁵ Others opposed all WCSC benefit reduction proposals⁹⁶ and suggested that the Commissioner of Insurance, rather than the Rating Bureau, prepare the actual workers' compensation premium rates.⁹⁷

Additional minority proposals included a presumption of reasonableness for settlements between parties represented by counsel,⁹⁸ permission for a workers' compensation judge to enter a medical finding of fact at variance with those offered in evidence,⁹⁹ removal of the inflation adjustment for permanent partial benefits,¹⁰⁰ and calculation of benefits to the nearest dollar.¹⁰¹ Other minority proposals suggested that the rating bureau be representative of employers, employees, and the public, as well as insurers,¹⁰² that the National Council of Compensation Insurers be excluded from involvement in rate making,¹⁰³ that Congress be asked to remove the antitrust immunity of the insurance industry,¹⁰⁴ that the former statutory maximum for insurer administrative expenses and profits be reinstated,¹⁰⁵ and that vacation, holiday, and sick time be excluded from workers' compensation premium calculations.¹⁰⁶

A final group of proposals were those offered for consideration, defeated by the WCSC, and not offered as minority recommendations.¹⁰⁷ Several of the proposals were considered anew by the Legislature.¹⁰⁸ These defeated motions included proposals to limit death benefits to 1000 weeks,¹⁰⁹ to permit insurer competition in premiums generally or in the amount of the administrative expense allowance,¹¹⁰ to allow payment of attorney's fees from supplemental benefits in all cases,¹¹¹ and to allow reimbursement of a claimant's attorney's fees when he intervenes in a liability dispute between the Special Fund and an insurer or employer.¹¹²

III. COMPARISON OF THE HOUSE AND SENATE BILLS

The report of the WCSC was formally issued to the Legislature and the Governor on February 19, 1979, and identical legislation embodying its recommendations was introduced in both houses shortly thereafter.¹¹³ The 1979 Workers' Compensation Act, however, was not finally passed by the House and Senate until May 24, 1979.¹¹⁴ The intervening weeks of committee, floor, and conference action saw many significant changes in the original WCSC recommendations. In the course of this legislative process, the House and Senate bills came to differ in some important respects.

One significant difference between the House and Senate involved the state-run workers' compensation insurance company proposal, which the Senate supported and the House opposed.¹¹⁵ Ultimately the Senate conceded and the House proposal for a study commission to consider the feasibility of such a fund was adopted.¹¹⁶ The house also sought to increase the WCSC recommendation that retraining benefits equal 115% of temporary total benefits to 125%, to which the Senate agreed.¹¹⁷ The House version of the rehabilitation section, which increased employee control over the rehabilitation provider, permitted greater job mobility through rehabilitation, and lessened the role of on-the-job training, was also reflected in the final legislation.¹¹⁸

The House increased supplementary benefits from sixty to sixty-five percent of the state average weekly wage,¹¹⁹ removed the WCSC-recommended statute of limitations from the Reopened Case Fund,¹²⁰ and extended existing penalties for unwarranted failure to pay medical and retraining expenses.¹²¹ These positions all prevailed, though the Senate insisted on allowing discontinuance of benefits prior to a hearing when reasons for discontinuance were offered.¹²²

The Senate convinced the House that the Workers' Compensation Court of Appeals should be increased from three to five members and that the two new members need not be attorneys.¹²³ The House also conceded that each party could solicit the opinion of a neutral physician.¹²⁴ The Senate prevailed on several provisions related to rate making and rate application; insurers were to provide additional information on losses, reserves, and investment income,¹²⁵ assigned-risk policies were to be treated equally with other policies in expense allowances,¹²⁶ and independent contractors were to be permitted an alternative rate when payroll could not be ascertained.¹²⁷ Finally, there were differences between the two chambers in the details of the Reinsurance Association.¹²⁸

IV. COMPARISON OF THE WCSC RECOMMENDATIONS AND THE FINAL LEGISLATION

The 1979 Workers' Compensation Act ultimately included forty-six of the fifty-seven WCSC recommendations in substantially the same form in which they were proposed. Three recommendations were significantly modified¹²⁹ and eight recommendations were not enacted. Two minority recommendations were passed and another provision of the statute was related to a proposal that was not adopted by the Commission.¹³⁰ One minority recommendation was to be studied further.¹³¹

The major differences between the WCSC report and the final legislation involved benefit provisions. The WCSC opposed the concurrent payment of permanent total and partial benefits in order to encourage a return to work, but such payments are still permissible under the new legislation.¹³² The WCSC sought to repeal the temporary total minimum benefit, since it provided some part-time employees with tax-free benefits greater than their actual earnings, but this minimum was retained in the 1979 law.¹³³ The WCSC proposal that a benefit award be reduced by the amount of any

workers' compensation, tort, or other reimbursement for any previous injury that contributed to the new disability was also deleted from the new legislation.¹³⁴ The two-year "waiting period" recommended by the WCSC before the cost-of-living adjustment would operate to increase a claimant's benefits also was not adopted by the Legislature.¹³⁵

Another benefit recommendation rejected by the Legislature concerned the rebuttable presumption that heart disease and pneumonia among firemen and peace officers are work related and thus compensable. The WCSC recommended that this presumption be repealed, but the Legislature retained it and added state forest officers to those enjoying the benefit of the presumption.¹³⁶ The original WCSC recommendation for deleting sexual reference in death benefits involved two provisions: both husbands and wives conclusively would be presumed dependent on an employee who suffered a work-related death and, after two years, benefits would be reduced by fifty percent of any earned income.¹³⁷ The Legislature, however, dropped the offset provision.¹³⁸

The Legislature also rejected two WCSC recommendations that would have increased benefit costs. The Commission had recommended that the maximum benefit of 100% of the state average weekly wage be increased to 200%, so that those earning more than 150% of the state average weekly wage would receive benefits equal to sixty-six and two-thirds percent of their actual earnings, as do employees earning less.¹³⁹ This would have been a very costly item, however, and the Legislature, concurring with a minority recommendation, struck that provision.¹⁴⁰ The Legislature also omitted the WCSC recommendation that workers' compensation coverage for public officials be mandatory, rather than optional.¹⁴¹

There were five other significant differences between the WCSC report and the final legislation. While the Legislature increased the number of Workers' Compensation Court of Appeals judges from three to five and provided for no more than two lay judges,¹⁴² as the WCSC had recommended, it did not institute the proposed restoration of the representative character of the court.¹⁴³ The WCSC proposal that the court consist of one public, two employer and two employee judges¹⁴⁴ was rejected by the Legislature. The WCSC had also recommended that notice to an employer of treatment of an employee by a medical carrier not be deemed notice of a work-related injury, unless the work-related nature was made explicit.¹⁴⁵ This proposal was rejected by the Legislature,¹⁴⁶ apparently because some of its members thought that penalizing the employee for the medical carrier's omission was unfair.

Another WCSC recommendation that was not incorporated in the statute was the proposal that a maximum wage base be established for workers' compensation premium purposes to avoid extra cost to those paying higher wages when no additional accident-exposure time was involved.¹⁴⁷ It was feared, however, that this would tend to shift workers' compensation costs from larger to smaller employers. The Legislature, however, did adopt two minority recommendations: exclusion of vacation, holiday, and sick time from payroll for premium purposes,¹⁴⁸ and retention of 100% of the state average weekly wage as the benefit maximum.¹⁴⁹ Since there is no accident exposure during periods of vacation and the like, to include them tends to increase the actual work-time premium rate for employers with generous leave policies. The new legislation also incorporated what came to be known as the "Robinson amendment", a provision permitting workers' compensation insurers to charge lower premiums than the rates approved at the rate hearing.¹⁵⁰ The WCSC had rejected two similar proposals. One of these sought full scale competition in workers' compensation insurance premiums instead of

regulated rate making.¹⁵¹ The other provided for competition in the expense allowance but retained the rate-making process.¹⁵²

In other respects, the final legislation was consistent with WCSC recommendations. The benefit recommendations relating to overpayments,¹⁵³ the scheduling of internal organ¹⁵⁴ and other disabilities, children's survivor benefits,¹⁵⁵ and payment of accrued benefits¹⁵⁶ were all enacted. Though these were modified, the Legislature also enacted the recommendations dealing with retraining benefits,¹⁵⁷ spousal death benefits,¹⁵⁸ and delay in payment of permanent partial benefits.¹⁵⁹ The comprehensive rehabilitation and retraining section was incorporated with only slight changes.¹⁶⁰ Most of the WCSC recommendations dealing with the administration of the workers' compensation system by the Commissioners of Labor and Industry, and Insurance, were passed. These included a proposal for consideration of workers' compensation expertise in determining attorneys' fees.¹⁶¹ The recommendation relating to medical fee review was also enacted after some modification.¹⁶²

Though the details of their structure and liability thresholds were modified, both of the major new funds, the Reopened Case Fund¹⁶³ and the Reinsurance Association,¹⁶⁴ came through the legislative process largely intact. This was also the case with the WCSC-proposed expansion of the liability of the existing Special Fund to cases of on-the-job training injuries,¹⁶⁵ unregistered preexisting disabilities,¹⁶⁶ and disputes of liability.¹⁶⁷

The Commissioner's recommendation that investment income be retained in the Special Fund also survived.¹⁶⁸ The proposals for neutral physicians' opinions,¹⁶⁹ second surgical opinions,¹⁷⁰ and temporary payments by a health insurance carrier when liability is disputed with a workers'

compensation carrier¹⁷¹ were also enacted. The limitation on coemployee liability to instances of intentional or grossly negligent acts was passed as well.¹⁷²

The WCSC had offered the Commissioner of Insurance several recommendations directed at the rate-making process and the Commissioner responded with statutory proposals. The Legislature then enacted several of these proposals, so that most of the WCSC recommendations relating to rates were more than fully implemented. Enacted were the substitution of prospective for retroactive rate adjustments for legislated benefit changes,¹⁷³ simultaneous adjustments in rates and benefit changes,¹⁷⁴ the division of an individual employee's wages among separate rating classifications when appropriate,¹⁷⁵ the development of actuarial tables suitable for the disabled,¹⁷⁶ and the reporting of more detailed loss and reserve information by insurers,¹⁷⁷ as well as information on investment income accruing to reserves.¹⁷⁸

The administrative expense allowance on assigned-risk policies was required to be no more than that approved for other policies, as had been recommended.¹⁷⁹

The Commissioner was also empowered to study the expansion of experience-rating plans to smaller employers.¹⁸⁰ The most comprehensive statutory changes involved enactment of the Commissioner's proposal for new procedures, based on contested-case provisions, rather than the existing rule-making hearings.¹⁸¹

The Commissioner received the power to review rate changes attributed to legislative benefit increases,¹⁸² to make decisions on an employer's occupational classifications,¹⁸³ and to consider investment income accruing to reserves in the rate-making process.¹⁸⁴ The statute did not incorporate the maximum workers' compensation insurance wage base proposal¹⁸⁵ and the expansion

of experience rating to smaller employers was to be studied rather than made mandatory.¹⁸⁶

V. ANALYSIS OF THE FINAL LEGISLATION IN LIGHT OF THE GOALS OF THE WCSC

It is perhaps too early for any comprehensive analysis of the legal and economic impact of the 1979 workers' compensation legislation, but it may be useful to attempt a provisional assessment of the compromises embodied in this legislation and their effect on the competing demands heard by the WCSC for higher benefits, lower costs, more regulatory safeguards, increased competition, less "liberality" in administration, decreased litigation, and a direct role for the state in the workers' compensation insurance business.¹⁸⁷

The points of identity between the WCSC recommendations and the final legislation may suggest relatively settled policy, while the points of divergence perhaps indicate areas in which policy is unsettled. In any case, a comparison of the two, together with an assessment of the workers' compensation issues unresolved by the legislation, gives a fairly good indication of the future direction of the law in this area, given the relatively intense study and debate on workers' compensation that characterized the WCSC and the 1979 legislative hearings.¹⁸⁸

The benefit recommendations of the WCSC fared worst in the legislative process.¹⁸⁹ The political pressure to decrease costs, the analysis of serious disincentives to return to work in the current law, the orthodox wage replacement theory, the perception that abuses were possible in the benefit system, and particularly, the adverse reaction to "double-dipping", led the WCSC to recommend several changes that would have reduced benefits in some cases. The Legislature, however, rejected most of these, while it

enacted all but one of the benefit increases or expansions of coverage and liability that were recommended, together with some others.¹⁹⁰

Though some claimants under the new legislation will receive decreased workers' compensation benefits as compared to the unamended statute, more will receive greater payments.¹⁹¹ In addition, new groups will qualify for benefits for the first time.¹⁹² The contrast between the 1979 law and the WCSC recommendations, which would have reduced previous statutory benefit levels and provided offsets against some of the new increases, is even more dramatic. It is difficult to estimate the cost of a provision such as the 200% state average weekly wage benefit maximum, which would have increased benefit levels for those earning between roughly \$18,000 and \$30,000. It does seem likely that actual benefit payments to these workers would be much less than their proportion in the work force since the risk of physical injury tends to be far less at these income levels than for the largely blue-collar jobs at lower income levels.¹⁹³ Thus, even considering the 200% maximum, which most observers assumed would quickly be deleted from the bill, it seems safe to say that the WCSC benefit recommendations would have moderately reduced benefit costs when compared to the previous statute. Without the 200% maximum, the WCSC recommendations would have effected a significant reduction. The benefit provisions in the final legislation, in contrast, involved a moderate increase in benefit costs.

For two years prior to enactment of the 1979 law there had been a sustained clamor over the rising cost of workers' compensation, focusing on the decidedly unpopular practice of "double-dipping". Workers' compensation costs were also a significant component of the "business climate"

issue in the 1978 elections and a number of legislators who were expected to favor benefit stabilization were elected in that year. Benefits, in fact, have been increasing steadily since 1973. The most comprehensive study of Minnesota's workers' compensation system since the 1920's had offered the conclusion that some benefits should be reduced. If ever there had been a time in which a reduction in workers' compensation benefits seemed likely it was in the 1979 legislative session. Nonetheless, few of those reductions materialized and several new increases did. A more appropriate moment for benefit "reform" will not reappear for some time. This suggests that the old legislative maxim - things previously granted are never taken away - still controls when workers' compensation issues are concerned, and that it is likely to control for a considerable time to come.

Despite the debacle suffered by proponents of benefit "reform", there are signs of a decrease in the rate of premium increases. The current Rating Association rate increase proposal, for example, is 28.6% as compared to the 67.5% increase sought in 1978.¹⁹⁴ The source of this moderation in the upward pressure on workers' compensation costs is to be found in several of the non-benefit provisions of the new legislation.

The rehabilitation and retraining system recommended by the WCSC, in contrast to the benefit recommendations, was adopted with few alterations by the Legislature.¹⁹⁵ The WCSC retraining and rehabilitation proposals were the central item in the employers' program for workers' compensation reform. These proposals increased employer initiative and control over the retraining process and diminished the role of the state Division of Vocational Rehabilitation, which employers disliked, in favor of private providers. The WCSC recommendations were designed to increase the

quality of retraining services and to increase incentives for realistic retraining, especially on-the-job programs, and for returning to work. The legislation retained these characteristics, but enhanced the employee's role in the selection of a rehabilitation provider and the development of the plan, increased the latitude for economic mobility through rehabilitation, and lessened the stress placed upon on-the-job training.¹⁹⁶ The retraining benefit was also increased from 115% to 125% of temporary total benefits in the legislation.¹⁹⁷ Rehabilitation, despite these changes, was the one area in which employers achieved more or less what they had hoped for. It seems likely that the changes in this area will have the effect of reducing costs through more effective training, reduced employee dissatisfaction, and a speedier return to work.

The Reopened Case Fund¹⁹⁸ and the Reinsurance Association¹⁹⁹ are another likely source of decreased premium pressure. Though these provisions will have no effect on workers' compensation claims, they obviate the need for insurers to anticipate workers' compensation claim payments as far into the future as they otherwise would have to do. Rather than each insurer providing for every possible catastrophe and assuming the worst future development of every claim, these two funds allocate the actual current cost of catastrophes and long-term claims.²⁰⁰ The result, even considering the assessments of the funds themselves, should be lower overall costs. The same result should be felt from the shift of liability from the insurer to the Special Fund for many preexisting injuries.²⁰¹

The miscellany of administrative changes incorporated in the 1979 law will also have a beneficial effect on worker's compensation costs. Better information and recordkeeping and speedier claims service have lessened litigation and reduced costs in other states and should do the same in

Minnesota.²⁰² The objective scheduling of most disabilities should reduce both litigation and unnecessary benefit payments.²⁰³

The medical provisions of the new law are not easy to assess in terms of cost. Second surgical opinions, however, have generally reduced surgical incidence.²⁰⁴ In the workers' compensation context, this would cause a reduction in both medical and benefit payments. The option of neutral medical opinions may also help to moderate unrealistic disability assessments and thus reduce costs.

The many changes in the rate-making process and the regulatory powers of the Commissioner of Insurance will have no direct effect on actual workers' compensation costs. But to the degree that more participation by employers and more power in the Commissioner makes it less likely that increases will be approved except when absolutely necessary, the changes may assist in moderating increases.²⁰⁵ Many new provisions have the effect of allocating the existing costs in a perhaps more equitable and efficient fashion, even when costs are not actually reduced.²⁰⁶ The additional information required of insurers and the requirement that investment income be considered in rate making could also result in more rational rate decisions.²⁰⁷ The statutory provisions that govern expansion of the option of self-insurance and which permit price competition among insurers also may generate competitive expense reductions by insurers themselves.²⁰⁸ Among the most difficult effects of the 1979 Act to assess are the political repercussions of the extended debate on the workers' compensation issue. The two and one-half year inquiry into the sources of high premiums, slow services, "liberal" decisions, benefit abuses, lack of competition, and excessive profits will

certainly have a sobering effect on the participants in the workers' compensation system, which may tend to reduce costs apart from the objective impact of the new rules themselves.

VI. CONCLUSION

The 1979 Workers' Compensation Act may be regarded as an attempt to reduce the costs of the workers' compensation system through nearly every means except reduction of benefits or major structural changes in the workers' compensation delivery system. There is no doubt that there is considerable fat in any mandatory 500 million dollar system administered by governmental agencies and by private insurers who are relatively insulated from competition. The changes adopted by the 1979 Minnesota Legislature were carefully considered and they address most of the areas in the workers' compensation system in which these unnecessary costs can be found. Thus, there is cause for moderate optimism that cost pressure will abate in the immediate future because of the legislation. But there is a limited amount of superfluous administrative expense in the workers' compensation system. These types of reductions can only go so far, and probably not much further than is provided in the new law. If the current rate proposal is any indication, costs will continue to rise, though at a less fearsome rate. It therefore seems inevitable that the deferred issues of what types and amounts of compensation should be provided through workers' compensation, and whether more competition should be introduced by ending rate regulation or creating a new state workers' compensation fund, will emerge again once the cost-saving potential of these administrative reforms is exhausted.

FOOTNOTES

1. See Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256 (codified in scattered sections of Minn. Stat. ch. 176 (Supp. 1979)). Minnesota's original workers' compensation law was Act of Apr. 24, 1913, ch. 467, 1913 Minn. Laws 675 (current version at Minn. Stat. §§176.011-82 (1978 & Supp. 1979)), as amended by Act of Mar. 28, 1980, ch. 384, §2, 1980 Minn. Sess. Law Serv. 100, 100 (West), as amended by Act of Mar. 28, 1980, ch. 385, 1980 Minn. Sess. Law Serv. 102 (West), as amended by Act of March 28, 1980, ch. 389, 1980 Minn. Sess. Law Serv. 104 (West), as amended by Act of March 28, 1980, ch. 392, 1980 Minn. Sess. Law Serv. 107 (West), as amended by Act of March 31, 1980, ch. 414, §2, 1980 Minn. Sess. Law Serv. 130, 130 (West), as amended by Act of Apr. 11, 1980, ch. 556, §12, 1980 Minn. Sess. Law Serv. 715, 721 (West), though an earlier act had modified common-law rules with respect to railroad employees. See Act of Feb. 24, 1887, ch. 13, 1887 Minn. Laws 69 (current version at Minn. Stat. §219.53 (1978)). Significant changes in the law were made in 1921, see Act of Mar. 14, 1921, ch. 82, 1921 Minn. Laws 90 (codified in scattered sections of Minn. Stat. ch. 176 (1978)), in 1937, see Act of Mar. 12, 1937, ch. 64, 1937 Minn. Laws 109 (codified in scattered sections of Minn. Stat. ch. 176 (1978)), and in 1953, see Act of Apr. 24, 1953, ch. 755, 1953 Minn. Laws 1099 (codified in scattered sections of Minn. Stat. ch. 176 (1978)).
2. Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256 (codified in scattered sections of Minn. Stat. ch. 176 (supp. 1979)) was derived from the companion bills, H.F. 946, 71st Minn. Legis. 1979 Sess. [hereinafter cited as H.F. 946] and S.F. 917, 71st Minn. Legis. 1979 Sess. [hereinafter cited as S.F. 917], which were introduced in both chambers soon after the Workers' Compensation Study Commission recommendations were issued. This legislation, amended in House and Senate Committees and further amended by the Joint Conference Committee, passed the Senate just minutes before the midnight adjournment hour on May 21, 1979, see Minn. S. Jour. 3555 (1979), but failed to come to a vote in the House before adjournment was required. S.F. 1, 71st Minn. Legis., 1979 Ex. Sess. was identical, except for minor technical adjustments, to the conference committee report of S.F. 917 and was passed under a suspension of rules by both houses without amendment on May 24, 1979. See Minn. S. Jour. 3590 (1979); Minn. H.R. Jour. 27-28 (Ex. Sess. 1979). The 57 recommendations of the Study Commission, the complete Study Commission report, an abbreviated report, and a summary of chapter 3 are available from the House Research Department. The reports, together with the session tapes and copies of all testimony, materials received, and staff reports are also on deposit with the Legislative Reference Library.

3. The employees expressly excluded from the workers' compensation law are those covered by the FELA, owner-officers of family farms and their employees, Minnesota Historical Society Volunteers, some veterans' organization delegates, some domestic workers, and some employees of non-profit associations. Included at their option are officers of closely held corporations, partners, sole owners, and family farm corporation executives. See Minn. Stat. § 176.041(1) (Supp. 1979).
4. The 1937 legislation finally removed the employer's option to elect common-law tort liability, making the workers' compensation system entirely mandatory. See Act of Mar. 12, 1937, ch. 64 § 1, 1937 Minn. Laws, 109, 109 (current version at Minn. Stat. § 176.031 (1978)).
5. See Act of June 7, 1979, ch. 3 §§ 36, 70, 1979 Minn. Laws Ex. Sess. 1256, 1278, 1297 (codified at Minn. Stat. § 176.102 (Supp. 1979)).
6. See id. §§ 17-25, 1979 Minn. Laws Ex. Sess. at 1262 (Reinsurance Association) (codified at Minn. Stat. §§ 79.34-.42 (Supp. 1979); id. § 43, 1979 Minn. Laws Ex. Sess. at 1285 (Reopened Case Fund) (codified at Minn. Stat. § 176.134 (Supp. 1979)).
7. See id. §67, 1979 Minn. Laws Ex. Sess. at 1296 (not codified). This second study commission has recommended the creation of a state workers' compensation fund and the deregulation of workers' compensation premium rates, MINNESOTA WORKERS' COMPENSATION STATE FUND STUDY COMMISSION, A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR 3-7 (1980).
8. See id. §§1-16, 1979 Minn. Laws Ex. Sess. at 1256 (codified in scattered sections of Minn. Stat. ch. 79 (Supp. 1979)).
9. See id. §50, 1979 Minn. Laws Ex. Sess. at 1287 (codified at Minn. Stat. §176.181 (2) (Supp. 1979)).
10. See, e.g., id. §34, 1979 Minn. Laws Ex. Sess. at 1273 (establishing a new permanent partial disability schedule) (codified at Minn. Stat. §176.101(3) (Supp. 1979)); id. §44, 1979 Minn. Laws Ex. Sess. at 1285 (requiring employer to furnish surgical treatment after employee has obtained two surgical opinions, one of which states that surgery is reasonably required) (codified at Minn. Stat. §176.135(1) (a) (Supp. 1979)).
11. Though the entire Act affects workers' compensation practitioners, a number of changes have particular significance for attorneys. These include new provisions on co-employee liability, id. § 31, 1979 Minn. Laws Ex. Sess. at 1272 (codified at Minn. Stat. § 176.061(5) (Supp. 1979)), a change in the size and possibly the direction of the Workers' Compensation Court of Appeals, see id. §§ 26-27, 1979 Minn. Laws Ex. Sess. at 1268 (codified at Minn. Stat. §§ 175.006-.08 (Supp. 1979)), prospective disability schedules for internal organ and certain other injuries, id. §§ 34, 62, 1979 Minn. Laws Ex. Sess. at 1273, 1295 (codified at Minn. Stat. §§ 176.101(3), .105 (Supp. 1979)), more liberal rules for employer registration of preexisting impairments, id. § 39, 1979 Minn. Laws Ex. Sess. at 1282 (amending Minn. Stat. § 176.131 (3) (1978)),

a conclusive presumption of dependency for both spouses, id §37, 1979 Minn. Laws Ex. Sess. at 1281 (codified at Minn. Stat. § 176.111(1) (Supp. 1979)), an increase to age twenty-five for student dependency, id., new notice provisions, id. §§ 46-47, 57-58, 1979 Minn. Laws Ex. Sess. at 1286, 1293 (amending Minn. Stat. §§ 176.141, .241, .271 (1978), adding Minn. Stat. § 176.139 (Supp. 1979)), permissible recovery of mistaken payments, id. § 49, 1979 Minn. Laws Ex. Sess. at 1287 (amending Minn. Stat. § 176.179 (1978)), authority for a workers' compensation judge to consider workers' compensation expertise in determining attorneys' fees, id. § 32, 1979 Minn. Laws Ex. Sess. at 1272 (amending Minn. Stat. § 176.081(5) (1978)), several provisions requiring immediate benefit payment with liability and indemnification determinations to be made later, id. § 52, 1979 Minn. Laws Ex. Sess. at 1290 (amending Minn. Stat. § 176.191 (1978)), new penalties for failure to make medical or retraining-related payments, id. § 53, 1979 Minn. Laws Ex. Sess. at 1291 (amending Minn. Stat. § 176.221 (1978)), a more limited right to discontinue benefits, id. § 57, 1979 Minn. Laws Ex. Sess. at 1293 (amending Minn. Stat. § 176.241 (1978)), and installment payments of permanent partial disability benefits, id. § 30, 1979 Minn. Laws Ex. Sess. at 1271 (amending Minn. Stat. § 176.021(3) (1978)).

Other legislation during the 1979 session provided that a settlement among parties, all of whom are represented by counsel, will be presumed reasonable, see Act of May 30, 1979, ch. 271 § 1, 1979 Minn. Laws 591, 592 (amending Minn. Stat. § 176.521(2) (1978)), required insurers to provide employers with information about the effect of merit and experience plans on their premiums, id. § 2, 1979 Minn. Laws at 592 (amending Minn. Stat. § 79.21 (1978)), changed rules on transferee employees' rights, Act of Apr. 3, 1979, ch. 15 § 1, 1979 Minn. Laws 15, 15 (amending Minn. Stat. § 176.041(2) (1978)), modified the provision for optional workers' compensation coverage for officers of closely held corporations and partners, Act of May 7, 1979, ch. 74, § 1, 1979 Minn. Laws 106, 106 (amending Minn. Stat. § 176.012 (1978)) (amended 1980); Act of May 17, 1979, ch. 92, § 3, 1979 Minn. Laws 130, 131 (amending Minn. Stat. § 176.012 (1978)) (amended 1980), imposed liability for employer's workers' compensation premium increases on third parties responsible for employees' injuries, Act of May 14, 1979, ch. 81, § 1, 1979 Minn. Laws 113, 114 (current version at Minn. Stat. § 176.061(5) (Supp. 1979)), and required payments for podiatric treatment, Act of May 21, 1979, ch. 107, § 1, 1979 Minn. Laws 149, 149 (amending Minn. Stat. § 176.135(1) (Supp. 1979)).

12. See Act of May 27, 1977, ch. 342 § 27, 1977 Minn. Laws 697, 714 (not codified).
13. The Workers' Compensation Study Commission [hereinafter cited as WCSC] was charged to study and report to the Governor and the Legislature upon the procedures by which the workers' compensation premium rates were established, comparative premium levels in Minnesota and in other states,

methods of providing workers' compensation coverage in other states, and the administration of the Minnesota law by the Department of Labor and Industry and the Workers' Compensation Court of Appeals. Id.

14. See generally MINNESOTA WORKERS' COMPENSATION STUDY COMMISSION, A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR 164-76 (1979) [hereinafter cited as STUDY COMM'N].

The escalation of workers' compensation costs from 1974 to 1978 changed Minnesota's relative position among the states from 21st to 14th in the average workers' compensation premium. The average premium increased from \$1.65 per each \$100 of payroll to \$2.83 during that period, an increase of 48%. See id. at 165. Fourteen other states had even more dramatic increases, including five whose average premium more than doubled. See id. This fact, however, was of very little comfort to Minnesota employers, who were inclined to compare the state with its immediate neighbors. In this comparison Minnesota fared rather badly.

Wisconsin's average premium in 1978 was \$1.44, up from \$1.05 in 1974. See id. But that state's 1978 average rate was still only 50% of Minnesota's. Minnesota's competitive disadvantage with its neighboring states could not be explained by a higher accident rate, either. Wisconsin, for example, had a higher frequency of industrial accidents than did Minnesota during this period. The average accident in Minnesota, however, cost 68% more in benefits and medical expenses than the average Wisconsin accident. See id. at 173.

Iowa's premiums had increased even more dramatically, from \$1.10 to \$2.72, just 11 cents under Minnesota's rate. See id. at 165. The Dakotas, however, were much lower than Minnesota. North Dakota's rates were \$1.31 in 1974 and \$1.80 in 1978 while South Dakota's were \$1.15 and \$1.43, increases of 37% and 24% respectively. See id. The increase in the average premium, however, was only part of the cost problem. The actual workers' compensation insurance premium for a business is based upon the size and type of business and the company's accident experience over the previous few years. See id. at 141-54. The smallest businesses are not eligible for the "premium discount", as it is called, nor for the "experience-rating" system. Thus, smaller businesses, already at a disadvantage in competition with larger firms, were often saddled with higher workers' compensation premiums as well. The lowest annual premium payment qualifying a firm for a premium discount is \$1,000 and the discount has varied from 9.4% at that level to 16.3% for premiums above \$100,000. See id. at 71. Experience rating, increasing or decreasing a premium based upon actual accident experience, is available only to those with premiums over \$750 and the decreases are partially subsidized by those with lower premiums. See id. at 152-54.

15. These cost increases, with their variable but uniformly disturbing impact on employers, followed in the wake of significant legislative changes during the same period. These changes commenced in 1971 and accelerated with the shift in the political balance in the Legislature in 1973. In that year, the Democratic Farmer Labor Party held the majority of seats in both chambers for the first time in history.

In 1971 there were increases in all types of workers' compensation benefits, as well as increases in the maximum benefit for survivors. See Act of May 22, 1971, ch. 475, 1971 Minn. Laws 829 (current version at Minn. Stat. §§ 176.101, .111 (1978 & Supp. 1979)). In addition, the Legislature created a higher supplementary benefit for older claims than the standard formula would otherwise provide. See Act of May 18, 1971, ch. 383, 1971 Minn. Laws 643 (current version at Minn. Stat. § 176.132 (1978 & Supp. 1979), as amended by Act of March 28, 1980, ch. 389, 1980 Minn. Sess. Law Serv. 104 (West)). Employers' contributions to the Special Fund were also increased severalfold, while the Special Fund's liability for benefits due to a second work-related injury was postponed to a full year after the employer's first payment on the second claim instead of the previous 26 weeks. See Act of May 27, 1971, ch. 589, 1971 Minn. Laws 1094 (current version at Minn. Stat. § 176.131(1)-(2), (4), (8) (1978 & Supp. 1979)); Act of May 27, 1971, ch. 593, 1971 Minn. Laws 1099 (current version at Minn. Stat. § 176.131(10) (Supp. 1979)). The pattern of benefit increases and erosion of the statute of limitations on claims, notice requirements, coverage limits, and employer defenses continued through 1978.

All workers' compensation benefits again were increased by the 1973 Legislature, which also created an additional benefit for peace officers killed in the line of duty. See Act of May 15, 1973, ch. 248, 1973 Minn. Laws 488 (current version at Minn. Stat. §§ 352E.01-.045 (1978 & Supp. 1979)). The provisions that had limited liability for occupational diseases were repealed. See Act of May 24, 1973, ch. 643 § 11, 1973 Minn. Laws 1584, 1594 (current version at Minn. Stat. § 176.66 (1978)). Permanent partial disability benefits were also provided, for the first time, for injuries to internal organs, see Act of May 23, 1973, ch. 600, 1973 Minn. Laws 1398 (current version at Minn. Stat. § 176.101(3) (Supp. 1979)), and a special statute of limitations provision was extended to occupational diseases. See Act of May 24, 1973, ch. 643 § 10, 1973 Minn. Laws 1584, 1593 (current version at Minn. Stat. § 176.151(4) (1978)). The only 1973 legislation likely to reduce costs was a new provision establishing a maximum for workers' compensation and social security disability benefits in combination. See *id.* § 7, 1973 Minn. Laws at 1591 (current version at Minn. Stat. & 176.111(21) (1978)).

In 1974 the Legislature increased supplementary benefits once more. See Act of Apr. 10, 1974, ch. 431, 1974 Minn. Laws 919 (current version at Minn. Stat. § 176.132 (1978 & Supp. 1979), as amended by Act of Mar. 28, 1980, ch. 389, 1980 Minn. Sess. Law Serv. 104 (West)). In addition, new

legislation responding to the Minnesota Supreme Court's decisions in Boquist v. Dayton-Hudson Corp., 297 Minn. 14, 209 N.W.2d 783 (1973) and Pramschiefer v. Windom Hospital, 297 Minn. 212, 211 N.W.2d 365 (1973) (per curiam), established that temporary total benefits could be received concurrently with permanent partial benefits, and further required the latter to be paid in a lump sum as soon as ascertainable. The court in Boquist had held that since permanent partial and permanent total benefits were both designed to replace lost earnings, they could not be received concurrently. See 297 Minn. at 18, 209 N.W.2d at 785. Pramschiefer extended this same reasoning to concurrent receipt of temporary total and permanent partial benefits. See 297 Minn. at 215, 211 N.W.2d at 368. The issues presented by these two cases did not arise until Mechling v. Jasper Stone Co., 293 Minn. 309, 198 N.W.2d 561 (1972). Prior to that case an employee whose disability persisted longer than two years was forced to elect either permanent partial benefits or temporary total benefits, since only two years of temporary total healing period benefits could be received in addition to permanent partial benefits, while 350 weeks of temporary total benefits were payable when no permanent partial benefits were claimed. The court in Mechling determined that the statutory sections providing temporary total and permanent partial benefits were to be read as separate and distinct entitlements, so that both forms of benefits could be received. See id. at 317-18, 198 N.W.2d at 566. The court was unwilling, however, to allow these benefits to be received at the same time in the absence of legislative intent to that effect. See id. at 314-15, 198 N.W.2d at 564. The 1974 Legislature provided that language. See Act of Apr. 12, 1974, ch. 486, §1, 1974 Minn. Laws 1230, 1231 (current version at Minn. Stat. § 176.021(3) (Supp. 1979)). Burns were also newly scheduled for permanent partial benefits and insurer recovery for mistaken benefit payments was denied. See id. §§ 3, 5, 1974 Minn. Laws at 1232, 1237 (current version at Minn. Stat. §§ 176.101, subd. 3(48), .179 (Supp. 1979)).

The 1975 Legislature continued this trend favoring more liberal benefits and fewer limits on liability. The fixed maximums for death benefits, temporary total benefits, and temporary partial benefits were removed and those for permanent partial and permanent total benefits were increased. See Act of June 4, 1975, ch. 359, §§ 8, 15, 1975 Minn. Laws 1168, 1174, 1182 (current version at Minn. Stat. §§ 176.101, .111(20) (1978 & Supp. 1979)). For the first time, a percentage adjustment of benefits to compensate for inflation was introduced. See id. § 20, 1975 Minn. Laws at 1188 (current version at Minn. Stat. & 176.645 (1978)). Minimum payments were also increased for temporary total and permanent total benefits. See id. § 8, 1975 Minn. Laws at 1174 (current version at Minn. Stat. § 176.101(1), (4) (Supp. 1979)). Minor survivors' benefits were increased, see id. § 14, 1975 Minn. Laws at 1182 (codified at Minn. Stat. & 176.111(12) (1978)), as were supplementary benefits, see id. § 18, 1975 Minn. Laws at 1185 (current version at Minn. Stat. § 176.132(2) (Supp. 1979)). Scarring was newly scheduled for permanent

partial payments. See *id.* § 8, 1975 Minn. Laws 1174 (current version at Minn. Stat. § 176.101, subd. 3(41) (Supp. 1979)). The statute of limitations for reopening or rehearing a claim was abolished too, and those for initial claims and for notice of injury were extended. See *id.* § 17, 1975 Minn. Laws at 1186 (current version at Minn. Stat. § 176.151 (1978)).

In 1976 the national guard was given workers' compensation coverage. See Act of Apr. 20, 1976, ch. 331, § 36, 1976 Minn. Laws 1282, 1299 (codified at Minn. Stat. § 176.011, subd. 9(11) (Supp. 1979)).

The following year, the Legislature amended the inflation adjustment provisions so that benefits could be increased for inflation beyond the statutory benefit maximums in effect at the time of the injury. See Act of May 27, 1977, ch. 342, § 23, 1977 Minn. Laws 697, 712 (codified at Minn. Stat. § 176.645 (1978)). The time period for notice of injury was doubled to 180 days. See *id.* § 19, 1977 Minn. Laws at 711 (current version at Minn. Stat. § 176.141 (Supp. 1979)). The year 1977 also saw the continuation and expansion of new exclusions from coverage for certain family farm and closely held corporation employees, see *id.* § 5, 1977 Minn. Laws at 700 (current version at Minn. Stat. § 176.041(1) (Supp. 1979)), and the enactment of a limit on annual increases in workers' compensation rates. See *id.* § 25, 1977 Minn. Laws at 713 (repealed 1978.)

In 1978, however, the rate increase limit was repealed. See Act of Apr. 7, 1978, ch. 797, § 1, 1978 Minn. Laws 1245, 1245. Instead, the Administrative Procedure Act was extended to the workers' compensation rate-making process in the hope that additional procedural requirements would assure lower rates. See *id.* (codified at Minn. Stat. § 79.071 (Supp. 1979)). Several other classes of employees were also added to workers' compensation coverage by statute in 1978. See Act of Mar. 28, 1978, ch. 702, 1978 Minn. Laws 614 (amending Minn. Stat. § 176.011(9) (Supp. 1977) (amended 1979, 1980)). Smaller employers in the same industry were given the option of self-insuring for workers' compensation liability through trade associations or other joint efforts. See Act of Apr. 7, 1978, ch. 797, § 4, 1978 Minn. Laws 1245, 1247 (current version at Minn. Stat. § 176.181(2) (Supp. 1979)). Coverage for executive officers of closely held corporations also was made optional in 1978. See Act of Apr. 5, 1978, ch. 757, § 2, 1978 Minn. Laws 925, 926 (amending Minn. Stat. § 176.012 (Supp. 1977) (amended 1979, 1980)). The supplementary benefit was reduced by five percent in the expectation of a social security increase covering the same individuals. See Act of Apr. 7, 1978, ch. 797, § 3, 1978 Minn. Laws 1245, 1246 (current version at Minn. Stat. § 176.132(2) (Supp. 1979)).

16. See STUDY COMM'N, *supra* note 14, at 136-64, 169-91.
17. For a comparative analysis of self-insurance in Minnesota and in other states, see *id.* at 245-72. For material on state funds in workers' compensation, see *id.* at 273-95.

18. See *id.* at 132-135, 199-213.
19. For a study of the effect of extensive litigation on workers' compensation costs, see California Workers' Compensation Institute, *Litigation in Workers' Compensation: A Report to the Industry* (1977).
20. The essential recommendations of the National Commission on State Workers' Compensation Laws (hereinafter cited as NCSWCL) were reflected in the WCSC recommendations that surviving children who were full-time students receive benefits until age 25 (Recommendation 12) and that workers' compensation coverage for appointed and elected officials be mandatory (Recommendation 13). See STUDY COMM'N, *supra* note 14, at 21-22. The former was adopted in Act of June 7, 1979, ch. 3 § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (codified at Minn. Stat. § 176.111(1), (Supp. 1979)).

The NCSWCL was created by President Nixon in 1971 in response to a congressional mandate for a study of the adequacy and uniformity of the state workers' compensation laws. See STUDY COMM'N, *supra* at 93. The NCSWCL's final report, issued in July 1972, found the states' workers compensation laws neither adequate nor uniform and offered 84 recommendations for changes in the state statutes, 19 of them described as "Essential". See *id.* Senators Harrison Williams and Jacob Javits offered legislation that would impose these essential recommendations as mandatory federal standards for state laws, see *id.* at 93-94, on the pattern of the federal conformity requirements for state unemployment compensation statutes. See Federal Unemployment Tax Act. 26 U.S.C. §§3301-3311 (1976 & Supp. II 1978) (amended 1979, 1980). Although this proposed legislation has been controversial, the prospect of federal intervention has given the NCSWCL's "advisory" recommendations considerable force at the state level, see STUDY COMM'N, *supra*, at 94. Minnesota was in compliance with 10 of the 19 essential recommendations in 1972 and 13 1/2 at the time the WCSC first met. See *id.* Though far less significant as an impetus to the WCSC than the cost pressure felt by employers, the need to consider adoption of at least some of the NCSWCL recommendations was a factor in the initiation of this comprehensive study of Minnesota's workers' compensation law. See *id.* at 93-99.

21. The legislative appointees to the WCSC included Representatives Leo Adams, Dick Kaley, and Wayne Simoneau, and Senators Nancy Brataas, Steve Keefe, and Roger Laufenberger. The gubernatorial appointees included Patrick Newlin, an actuary with St. Paul Fire and Marine Insurance Company, Wendy

Borsheim, President of the Minnesota Retail Merchants Association, Laurence Koll, a workers' compensation defense attorney, Neil Sherburne, former Secretary-Treasurer of the Minnesota AFL-CIO, C. Arthur Williams, Professor and former Dean of the University of Minnesota College of Business Administration, Nadine James, a workers' compensation judge, and W. Preston Shepard, Regional Vice President of Employers Insurance of Wausau. E. I. "Bud" Malone, then Commissioner of the Minnesota Department of Labor and Industry, and Tom O'Malley, Assistant Commissioner of the Insurance Division of the Minnesota Department of Commerce, also served as members of the WCSC. See STUDY COMM'N, *supra* note 14, at 2-6.

22. See *id.* at 7-15.
23. See STUDY COMM'N, *supra* note 14.
24. See *id.* at 68-92.
25. Professor Larson discusses compensation theories based upon an individual's needs, loss of earning capacity, social judgments placing the cost of work injuries on product consumers, and imposing strict liability upon employers. See 1 A. LARSON, THE LAW OF WORKMEN'S COMPENSATION §§ 2.20, 3.30 (1978). For an analysis of the origins of Minnesota's workers' compensation laws, see Asher, The Origins of Workmen's Compensation in Minnesota, 44 Minn. Hist. 142 (1974).
26. See, e.g., Statement of Harry Peterson, Vice President, Minnesota Association of Commerce and Industry, before the Workers' Compensation Study Commission (Oct. 30, 1978).
27. See, e.g., Letter from John E. Diehl, Attorney, to Senator Steve Keefe (Feb. 8, 1978).
28. See, e.g., Statement of Abe Rosenthal, Executive Vice President, Minnesota Transport Service Association, before the Annual Convention of Minnesota Insurance Agents Association (Sept. 23, 1977).
29. See, e.g., Letter from Thomas C. Nobel, Lake Line Helicopters, Inc., to Senator Steve Keefe (Sept. 30, 1977).
30. See, e.g., Letter from John A. Cairns, Lobbyist for American Insurance Association, to Senator Steve Keefe (Sept. 9, 1977).
31. See generally S. Jackson & P. Hyduke, Second Opinion on Elective Surgical Procedures: A Background Document on Prospective Surgical Review (Minn. H.R. Research Dep't., 1978).

32. See, e.g., Letter from Robert K. Severson, Attorney, to Senator Steve Keefe (Sept. 1, 1977).
33. For an explanation and analysis of these 13 recommendations, see STUDY COMM'N, *supra* note 14, at 16-22.
34. See *id.* at 16 (Recommendation 1).
35. See *id.* at 16-17 (Recommendation 2).
36. See *id.* at 17 (Recommendation 3).
37. See *id.* at 18 (Recommendation 6).
38. See *id.* at 17 (Recommendation 4).
39. See *id.* at 19-20 (Recommendation 8).
40. See *id.* at 20 (Recommendation 9).
41. See *id.* at 18-19 (Recommendation 7).
42. See *id.* at 17-18 (Recommendation 5).
43. See *id.* at 21-22 (Recommendation 12).
44. See *id.* at 22 (Recommendation 13).
45. See *id.* at 21 (Recommendation 11).
46. See *id.* at 20-21 (Recommendation 10).
47. See *id.* at 40-41 (Recommendation 40).
48. See *id.* at 49 (Recommendation 57).
49. See *id.* at 22-27 (Recommendation 14). The rehabilitation proposal came before the WCSC after it was adopted by the Workers' Compensation Advisory Council, a permanent statutory body which monitors the workers' compensation system and offers its own periodic recommendations for statutory or other changes. See *id.* at 22.
50. For an explanation and analysis of these recommendations, see *id.* at 28-35 (Recommendations 15-28).
51. See *id.* at 30 (Recommendation 19).
52. See *id.* (Recommendation 20).

53. See id. (Recommendation 21).
54. See id. at 41 (Recommendation 25).
55. See id. at 33 (Recommendation 25).
56. See id.
57. See id. at 33-34 (Recommendation 26).
58. See id. at 34-35 (Recommendation 28).
59. See id. at 35 (Recommendation 29), 44-45 (Recommendation 47).
60. See id. at 35 (Recommendation 29).
61. See id. at 44-45 (Recommendation 47).
62. See id. at 34.
63. See id. at 44.
64. See id. at 36-37 (Recommendations 30-33). For an analysis of the Special Fund, see Ehlmann, Minnesota's Second Injury Fund, 6 Wm. Mitchell L. Rev. - (1980).
65. See id. at 36 (Recommendation 30).
66. See id. (Recommendation 31).
67. See id. at 36-37 (Recommendation 32).
68. See id. at 37 (Recommendation 33).
69. See id. at 37-38 (Recommendations 34-36).
70. See id. (Recommendation 34).
71. See id. at 38 (Recommendation 35).
72. See id. (Recommendation 36).
73. See id. at 39-40 (Recommendations 37-39), 42-49 (Recommendations 42-57).
74. See id. at 39 (Recommendation 38).
75. See id. (Recommendation 37).
76. See id. at 42 (Recommendation 42).

77. See id. (Recommendation 43)).
78. See id. at 43 (Recommendation 45).
79. See id. at 47 (Recommendation 51).
80. See id. (Recommendation 50).
81. See id. at 47-48 (Recommendation 52).
82. See id. at 48 (Recommendation 53-54).
83. See id. at 48-49 (Recommendation 55).
84. See id. at 49 (Recommendation 56).
85. See id. at 45-46 (Recommendation 48).
86. See id. at 46 (Recommendation 49).
87. See id. at 43-44 (Recommendation 46).
88. See id. at 42-43 (Recommendation 44).
89. See id. at 68-92 (Minority Recommendations 1-16).
90. See id. at 68-74 (Minority Recommendation 1).
91. See id. at 54-55 (Defeated Motion 9). The Workers' Compensation State Fund Study Commission, however, recently recommended the creation of such a fund, see id. §67, 1979 Minn. Laws Ex. Sess. at 1296 (not codified).
92. See id. at 75-78 (Minority Recommendation 2).
93. See id. at 78-80 (Minority Recommendation 3).
94. See id. at 82-83 (Minority Recommendation 5).
95. See id. at 80-81 (Minority Recommendation 4).
96. See id. at 90-91 (Minority Recommendation 15).
97. See id. at 89 (Minority Recommendation 10).
98. See id. at 83-84 (Minority Recommendation 6).
99. See id. at 85-86 (Minority Recommendation 8).

100. See id. at 86-88 (Minority Recommendation 9).
101. See id. at 85 (Minority Recommendation 7).
102. See id. at 89 (Minority Recommendation 12).
103. See id. (Minority Recommendation 11).
104. See id. at 90 (Minority Recommendation 11).
105. See id. (Minority Recommendation 14).
106. See id. at 92 (Minority Recommendation 14).
107. See id. at 50-55 (Defeated Motions 1-10).
108. See note 130 infra and accompanying text.
109. See STUDY COMM'N, supra note 14, at 51-52 (Defeated Motion 3).
110. See id. at 53-54 (Defeated Motions 7-8). Fully competitive workers' compensation premium rates were, however, recently recommended by the Workers' Compensation State Fund Study Commission, see id. § 67, 1979 Minn. Laws. Ex. Sess. at 1296 (not codified).
111. See id. at 52 (Defeated Motion 4).
112. See id. at 52-53 (Defeated Motion 5).
113. See id. at 1-15.
114. See Minn. S. Jour. 8 (Ex. Sess. 1979); Minn. H.R. Jour. 3677-78 (Ex. Sess. 1979).
115. See Letter from Minnesota Senate Counsel to Senate and House Conferees, at 10 (May 19, 1979).
116. See Act of June 7, 1979, ch. 3, § 67, 1979 Minn. Laws Ex. Sess., 1256, 1296 (not codified). The Senate proposal for state indemnity for workers' compensation liabilities of self-insuring political subdivisions, however, was adopted. See id. § 51, 1979 Minn. Laws Ex. Sess. at 1289 (codified at Minn. Stat. §176.181(5) (Supp. 1979)). The Workers' Compensation State Fund Study Commission has recently recommended the creation of such a fund, in addition to the deregulation of workers' compensation premium rates, see id. § 67, 1979 Minn. Laws. Ex. Sess. at 1296 (not codified).

117. See id. §36(11), 1979 Minn. Laws Ex. Sess. at 1281 (codified at Minn. Stat. § 76.102(11) (Supp. 1979)). Compare S.F. 917, § 17(11), 71st Minn. Legis., 1979 Sess. with Minn. H.R. Jour. 2601, 2631 (1979).
118. See Act of June 7, 1979, ch. 3 §36(4)-(5), 1979 Minn. Laws Ex. Sess. 1256, 1279-80 (codified at Minn. Stat. § 176.102(4)-(5) (Supp. 1979)). Compare Minn. H.R. Jour. 2601, 2629-30 (1979) with S.F. 917 § 17(4)-(5), 71st Minn. Legis., 1979 Sess.
119. See Act of June 7, 1979, ch. 3 § 41, 1979 Minn. Laws. Ex. Sess. 1256, 1284 (codified at Minn. Stat. § 176.132(2) (Supp. 1979)); Minn. H.R. Jour. 2601, 2634-35 (1979) (House Amendment).
120. See Act of June 7, 1979, ch. 3, § 43, 1979 Minn. Laws Ex. Sess. 1256, 1285 (codified at Minn. Stat. § 176.134(2) (Supp. 1979)). Compare Minn. H.R. Jour. 2601, 2635-36 (1979) with S.F. 917 § 23, 71st Minn. Legis., 1979 Sess.
121. See Act of June 7, 1979, ch. 3 § 53, 1979 Minn. Laws Ex. Sess. 1256, 1291 (codified at Minn. Stat. § 176.221 (Supp. 1979)); Minn. H.R. Jour. 2601, 2641-43 (1979) (House Amendment).
122. See Act of June 7, 1979, ch. 3 § 57, 1979 Minn. Laws Ex. Sess. 1256, 1293 (codified at Minn. Stat. § 176.241 (Supp. 1979)).
123. See id. § 26, 1979 Minn. Laws. Ex. Sess. at 1268 (codified at Minn. Stat. § 175.006(1) (Supp. 1979)).
124. Compare id. §§ 48, 59, 1979 Minn. Laws. Ex. Sess. at 1286, 1294 (codified at Minn. Stat. §§ 176.155(2), .391(2) (Supp. 1979) with S.F. 917 §§ 27, 34, 71st Minn. Legis. 1979 Sess. See generally STUDY COMM'N, supra note 14, at 37-38 (Recommendation 34).
125. See Act of June 7, 1979, ch. 3, § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at Minn. Stat. § 79.171 (Supp. 1979)).
126. See id. § 15, 1979 Minn. Laws Ex. Sess. at 1262 (codified at Minn. Stat. § 79.25(2) (Supp. 1979)).
127. See id. § 14, 1979 Minn. Laws Ex. Sess. at 1262 (codified at Minn. Stat. § 79.221 (Supp. 1979)).

128. Compare id. §§ 17-25, 1979 Minn. Laws Ex. Sess. at 1262-67 (amended 1980) and Minn. H.R. Jour. 2609-15 (1979) with S.F. 917, §§ 36-45, 71st Minn. Legis., 1979 Sess.
129. Compare STUDY COMM'N, supra note 14, at 16 (Recommendation 2) with Act of June 7, 1979, ch. 3 § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271 (governing permanent partial benefits upon return to work) (codified at Minn. Stat. § 176.021(3) (Supp. 1979)); compare STUDY COMM'N, supra note 14, at 20 (Recommendation 10) with Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (presumption of dependency for spouses rather than widows) (codified at Minn. Stat. § 176.111(1) (Supp. 1979)); compare STUDY COMM'N supra note 14, at 33 (Recommendation 25) with Act of June 7, 1979, ch. 3, § 26, 1979 Minn. Laws Ex. Sess. 1256, 1268 (expanding Workers' Compensation Court of Appeals) (codified at Minn. Stat. § 175.066(1) (Supp. 1979)).
130. Compare STUDY COMM'N supra note 14, at 80 (Minority Recommendation 4) with Act of June 7, 1979, ch. 3, §§ 33-35, 1979 Minn. Laws Ex. Sess. 1256, 1273-78 (retaining maximum disability benefit of 100% of state average weekly wage) (codified at Minn. Stat. § 176.101(1), (3)-(4) (Supp. 1979)); compare STUDY COMM'N, supra note 14, at 92 (Minority Recommendation 16) with Act of June 7, 1979, ch. 3, § 12, 1979 Minn. Laws Ex. Sess. 1256, 1261 (excluding vacation, holiday, and sick leave wages from computation of insurance premiums) (codified at Minn. Stat. § 79.211(1) (Supp. 1979)); compare STUDY COMM'N, supra note 14, at 54 (Defeated Motion 8) (recommending that insurance rates be determined by open competition) with Act of June 7, 1979, ch. 3 § 11, 1979 Minn. Laws Ex. Sess. 1256, 1261 (permitting insurers to offer rates lower than those approved by Commissioner of Insurance) (codified at Minn. Stat. § 79.21 (Supp. 1979)). Fully competitive workers' compensation premium rates were, however, recently recommended by the Workers' Compensation State Fund Study Commission, see id. § 67, 1979 Minn. Laws. Ex. Sess. at 1296 (not codified).
131. Compare STUDY COMM'N, supra note 14, at 68 (Minority Recommendation 1) (recommending establishment of competitive state insurance fund) with Act of June 7, 1979, ch. 3 § 67, 1979 Minn. Laws. Ex. Sess. 1256, 1296 (creating study commission to examine feasibility of state fund) (not codified). The Workers' Compensation State Fund Study Commission, however, recently recommended the creation of such a fund, see id. § 67, 1979 Minn. Laws Ex. Sess. at 1296 (not codified).

132. Compare STUDY COMM'N, supra note 14, at 16-17 (Recommendation 3) with Act of June 7, 1979, ch. 3, § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271 (codified at Minn. Stat. § 176.021(3) (Supp. 1979)).
133. Compare STUDY COMM'N, supra note 14, at 17 (Recommendation 3) with Act of June 7, 1979, ch. 3 § 33, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at Minn. Stat. § 176.101(1) (Supp. 1979)).
134. See STUDY COMM'N, supra note 14, at 17 (Recommendation 4).
135. See id. at 18-19 (Recommendation 7).
136. Compare id. at 20 (Recommendation 9) with Act of June 7, 1979, ch. 3, § 29, 1979 Minn. Laws Ex. Sess. 1256, 1270 (codified at Minn. Stat. § 176.011(5) (Supp. 1979)).
137. See STUDY COMM'N, supra note 14, at 20-21 (Recommendation 10).
138. See Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (codified at Minn. Stat. § 176.111(1) (Supp. 1979)).
139. See STUDY COMM'N, supra note 14, at 17-18 (Recommendation 5).
140. See id. at 80-81 (Minority Recommendation 4).
141. See id. at 22 (Recommendation 13).
142. See Act of June 7, 1979, ch. 3 & 26, 1979 Minn. Laws Ex. Sess. 1256, 1268 (codified at Minn. Stat. § 175.006 (Supp. 1979)).
143. See STUDY COMM'N, supra note 14, at 33 (Recommendation 25).
144. See id.
145. See id. at 30-31 (Recommendation 20).
146. Cf. Act of June, 7, 1979, ch. 3, § 47, 1979 Minn. Laws Ex. Sess. 1256, 1286 (retaining notice provision of prior law) (codified at Minn. Stat. § 176.141 (Supp. 1979)).
147. See STUDY COMM'N, supra note 14, at 47 (Recommendation 50).
148. Compare id. at 92 (Minority Recommendation 16) with Act of June 7, 1979, ch. 3, § 12, 1979 Minn. Laws Ex. Sess. 1256, 1261 (codified at Minn. Stat. § 79.211(1) (Supp. 1979)).

149. Compare STUDY COMM'N, supra note 14, at 80-81 (Minority Recommendation 4) with, e.g. Act of June 7, 1979, ch. 3, § 33, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at Minn. Stat. § 176.101(1) (Supp. 1979)).
150. See Act of June 7, 1979, ch. 3 § 11, 1979 Minn. Laws Ex. Sess. 1256, 1261 (codified at Minn. Stat. § 79.21 (Supp.1979)).
151. See STUDY COMM'N, supra note 14, at 54 (Defeated Motion 8). The proposal was recently adopted by the Workers' Compensation State Fund Study Commission, see id. § 67, 1979 Minn. Laws. Ex. Sess. at 1296 (not codified).
152. See id. at 53 (Defeated Motion 7).
153. Compare id. at 18 (Recommendation 6) with Act of June 7, 1979, ch. 3, §49, 1979 Minn. Laws Ex. Sess. 1256, 1287 (codified at Minn. Stat. § 176.179 (Supp. 1979)).
154. Compare STUDY COMM'N, supra note 14, at 19-20 (Recommendation 8) with Act of June 7, 1979, ch. 3, § 34, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at Minn. Stat. § 176.101, subd. 3(40) (Supp. 1979)).
155. Compare STUDY COMM'N, supra note 14, at 21-22 (Recommendation 12) with Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (codified at Minn. Stat. § 176.111(1) (Supp. 1979)).
156. Compare STUDY COMM'N, supra note 14, at 21 (Recommendation 11) with Act of June 7, 1979, ch. 3 § 30, 1979 Minn. Laws Ex. Sess. 1256, 1271 (codified at Minn. Stat. § 176.021(3) (Supp. 1979)).
157. Compare STUDY COMM'N, supra note 14, at 16 (Recommendation 1) (recommending payment of 115% of temporary total disability benefits in lieu of compensation during retraining) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (providing payment equal to 125% of temporary total disability benefits in lieu of compensation during retraining) (codified at Minn. Stat. § 176.102(11) (Supp. 1979)).
158. Compare STUDY COMM'N, supra note 14, at 20-21 (Recommendation 10) with Act of June 7, 1979, ch. 3, § 37, 1979 Minn. Laws Ex. Sess. 1256, 1281 (Act removed offset for spousal income) (codified at Minn. Stat. § 176.111(1) (Supp. 1979)).

159. Compare STUDY COMM'N, supra note 14, at 16-17 (Recommendation 2) with Act of June 7, 1979, ch. 3, § 30, 1979 Minn. Laws Ex. Sess., 1256, 1271 (Act removed offset for spousal income) (codified at Minn. Stat. § 176.021(3) (Supp. 1979)).
160. Compare STUDY COMM'N, supra note 14, at 22-27 (Recommendation 14) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at Minn. Stat. § 176.102 (Supp. 1979)).
161. Compare STUDY COMM'N, supra note 14, at 34-35 (Recommendation 28) with Act of June 7, 1979, ch. 3, § 32, 1979 Minn. Laws Ex. Sess. 1256, 1272 (codified at Minn. Stat. § 176.081(5) (Supp. 1979)).
162. Compare STUDY COMM'N, supra note 14, at 28-29 (Recommendation 16) with Act of June 7, 1979, ch. 3, § 45, 1979 Minn. Laws Ex. Sess. 1256, 1286 (codified at Minn. Stat. § 176, 136 (Supp. 1979)).
163. Compare STUDY COMM'N, supra note 14, at 35 (Recommendation 29) with Act of June 7, 1979, ch. 3, § 43, 1979 Minn. Laws Ex. Sess. 1256, 1285 (codified at Minn. Stat. § 176.134 (Supp. 1979)).
164. Compare STUDY COMM'N, supra note 14, at 44-45 (Recommendation 47) with Act of June 7, 1979, ch. 3, §§ 17-25, 1979 Minn. Laws Ex. Sess. 1256, 1262-67 (codified at Minn. Stat. §§ 79.34-.42 (Supp. 1979) (amended 1980)).
165. Compare STUDY COMM'N, supra note 14, at 36-37 (Recommendation 32) with Act of June 7, 1979, ch. 3, § 38, 1979 Minn. Laws Ex. Sess. 1256, 1282 (codified at Minn. Stat. § 167.131(1)(a), (Supp. 1979)).
166. Compare STUDY COMM'N, supra note 14, at 36 (Recommendation 30) with Act of June 7, 1979, ch. 3, § 39, 1979 Minn. Laws Ex. Sess. 1256, 1282 (codified at Minn. Stat. § 176.131(3) (Supp. 1979)).
167. Compare STUDY COMM'N, supra note 14, at 37 (Recommendation 33) with Act of June 7, 1979, ch. 3, § 52, 1979 Minn. Laws Ex. Sess. 1256, 1290 (codified at Minn. Stat. § 176.191(2) (Supp. 1979)).
168. Compare STUDY COMM'N, supra note 14, at 36 (Recommendation 31) with Act of June 7, 1979, ch. 3, § 40, 1979 Minn. Laws Ex. Sess. 1256, 1282 (amending Minn. Stat. & 176.131(10) (1978)).
169. Compare STUDY COMM'N, supra note 14, at 37-38 (Recommendation 34) with Act of June 7, 1979, ch. 3, § 48, 1979 Minn. Laws Ex. Sess. 1256, 1286 (codified at Minn. Stat. § 176.155(2) (Supp. 1979)).
170. Compare STUDY COMM'N, supra note 14, at 38 (Recommendation 35) with Act of June 7, 1979, ch. 3, § 44, 1979 Minn. Laws Ex. Sess. 1256, 1285 (codified at Minn. Stat. § 176.135(1)(a) (Supp. 1979)).

171. Compare STUDY COMM'N, supra note 14, at 38 (Recommendation 36) with Act of June 7, 1979, ch. 3, § 52, 1979 Minn. Laws Ex. Sess. 1256, 1290 (codified at Minn. Stat. & 176.191(3) (Supp. 1979)).
172. Compare STUDY COMM'N, supra note 14, at 40-41 (Recommendation 40) with Act of June 7, 1979, ch. 3, § 31, 1979 Minn. Laws Ex. Sess. 1256, 1272 (codified at Minn. Stat. § 176.061(5) (Supp. 1979)).
173. Compare STUDY COMM'N, supra note 14, at 42-43 (Recommendations 43-44) with Act of June 7, 1979, ch. 3, § 6, 1979 Minn. Laws Ex. Sess. 1256, 1259 (codified at Minn. Stat. § 79.075 (Supp. 1979)).
174. See note 173 supra.
175. Compare STUDY COMM'N, supra note 14, at 43 (Recommendations 43-44) with Act of June 7, 1979, ch. 3, § 12, 1979 Minn. Laws Ex. Sess. 1256, 1261 (codified at Minn. Stat. § 79.211(2) (Supp. 1979) (amended 1980)).
176. Compare STUDY COMM'N, supra note 14, at 47-48 (Recommendation 45) with Act of June 7, 1979, ch. 3, § 16, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at Minn. Stat. § 79.33 (Supp. 1979)).
177. Compare STUDY COMM'N, supra note 14, at 48 (Recommendations 53-54) with Act of June 7, 1979, ch. 3, § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at Minn. Stat. § 79.171 (Supp. 1979)).
178. Compare STUDY COMM'N, supra note 14, at 49 (Recommendation 56) with Act of June 7, 1979, ch. 3 § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at Minn. Stat. 79.171 (Supp. 1979)).
179. Compare STUDY COMM'N, supra note 14, at 45-46 (Recommendation 48) with Act of June 7, 1979, ch. 3, § 15, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at Minn. Stat. § 79.25(2) (Supp. 1979)).
180. Compare STUDY COMM'N, supra note 14, at 47 (Recommendation 51) with Act of June 7, 1979, ch. 3, § 16, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at Minn. Stat. § 79.33 (Supp. 1979)).
181. Compare STUDY COMM'N, supra note 14, at 46 (Recommendation 49) with Act of June 77, 1979, ch. 3, §§ 2-4, 1979 Minn. Laws Ex. Sess. 1256, 1256-58 (codified at Minn. Stat. §§ 79.071-.073 (Supp. 1979) (amended 1980)).
182. Compare STUDY COMM'N, supra note 14, at 42-43 (Recommendation 44) with Act of June 7, 1979, ch. 3, § 6, 1979 Minn. Laws Ex. Sess. 1256, 1259 (codified at Minn. Stat. § 79.075 (Supp. 1979)).
183. Compare STUDY COMM'N, supra note 14, at 43-44 (Recommendation 46) with Act of June 7, 1979, ch. 3, § 9, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at Minn. Stat. § 79.10 (Supp. 1979)).

184. Compare STUDY COMM'N, supra note 14, at 49 (Recommendation 56) with Act of June 7, 1979, ch. 3, § 10, 1979 Minn. Laws Ex. Sess. 1256, 1260 (codified at Minn. Stat. § 79.171 (Supp. 1979)).
185. See STUDY COMM'N, supra note 14, at 47 (Recommendation 50).
186. Compare id. (Recommendation 51) with Act of June 7, 1979, ch. 3, § 16, 1979 Minn. Laws Ex. Sess. 1256, 1262 (codified at Minn. Stat. § 79.33 (Supp. 1979)).
187. See notes 26-32 supra and accompanying text.
188. The Workers' Compensation Study Commission held 40 meetings in the course of its study. See STUDY COMM'N, supra note 14, at 7-15. For a summary of the testimony offered at these meetings, see id.
189. See notes 132-38, supra and accompanying text.
190. See notes 34, 49, 157-60 supra and accompanying text.
191. Reductions are likely only for a minority of recipients of retraining benefits and for recipients of benefits paid by mistake. Increases will result for most retrainees, all recipients of supplementary benefits, some survivors of deceased employees, and employees or their survivors with very late claims. See generally Act of June 7, 1979, ch. 3, 1979 Minn. Laws Ex. Sess. 1256.
192. The new coverage is that of husbands under the presumption of spousal dependency and students between the ages of 21 and 25 who are dependents of deceased employees. See id. § 37, 1979 Minn. Laws Ex. Sess. at 1281 (codified at Minn. Stat. § 176.111(1) (Supp. 1979)).
193. See STUDY COMM'N, supra note 14, at 17-18 (Recommendation 5). The maximum of 200% of the state average weekly wage would have meant that those earning between \$339 and \$678 weekly would receive two-thirds of their weekly incomes (between \$225 and \$452) as benefits, as do employees with less income, rather than a flat \$226. Those earning over \$678 would only receive \$452. The insurance rating service for workers' compensation estimated that this proposal would increase workers' compensation costs by 4.9%, but this estimate did not consider the relative risk exposure of higher income workers. See Letter from J. P. Heldebrandt, General Manager, Minnesota Compensation Rating Bureau, to Senator Steve Keefe (Mar 15, 1979).
194. Workers' Compensation Rating Association of Minnesota, 1979 Rate Filing, Exhibit A, page 2.

195. Compare STUDY COMM'N, supra note 14, at 22-27 (Recommendation 14) with Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at Minn. Stat. § 176.102 (Supp. 1979)).
196. See Act of June 7, 1979, ch. 3, § 36, 1979 Minn. Laws Ex. Sess. 1256, 1278 (codified at Minn. Stat. § 176.102 (Supp. 1979)).
197. See id.
198. See id. § 43, 1979 Minn. Laws. Ex. Sess. at 1285 (codified at Minn. Stat. § 176.134 (Supp. 1979)).
199. See id. §§ 17-25, 1979 Minn. Laws Ex. Sess. at 1262-67 (codified at Minn. Stat. §§ 79.34-.42 (Supp. 1979) (amended 1980)).
200. For an analysis of this effect, see STUDY COMM'N, supra note 14, at 35, 44-45.
201. See Act of June 7, 1979, ch. 3, § 38, 1979 Minn. Laws Ex. Sess. 1256, 1282, (codified at Minn. Stat. § 176.131(1)(a) (1979)).
202. For an analysis of litigation and workers' compensation costs in California, see California Workers' Compensation Institute, supra note 19. For an analysis of this effect in Wisconsin, see STUDY COMM'N, supra note 14, at 199-213.
203. See Act of June 7, 1979, ch. 3, § 34, 1979 Minn. Laws Ex. Sess. 1256, 1273 (codified at Minn. Stat. § 176.101, subd. 3(40) (Supp. 1979)); STUDY COMM'N, supra note 14, at 19-20.
204. For an assessment of second medical opinion programs, see STUDY COMM'N, supra note 14, at 236-41.
205. Employers, under the 1979 Act, have increased opportunities for participation in the rate hearings, clearer standards for challenging rates, and improved means of challenging classification and rate decisions. In addition to particular changes in the 1979 Act, provisions of the Administrative Procedure Act applicable to contested cases are now to be applied to the rate hearings. The Commissioner's powers of inquiry, rate review, oversight, and regulation are also expanded. See Act of June 7, 1979, ch. 3, §§ 1-16, 1979 Minn. Laws Ex. Sess. 1256, 1256-62 (codified in scattered sections of Minn. Stat. ch. 79 (Supp. 1979) (amended 1980)).
206. See e.g., id. § 6, 1979 Minn. Laws Ex. Sess. at 1259 (codified at Minn. Stat. § 79.075 (Supp. 1979)).

207. See id. § 2, 1979 Minn. Laws Ex. Sess. at 1256 (codified at Minn. Stat. § 79.071 (Supp. 1979) (amended 1980)); id. § 10, 1979 Minn. Laws Ex. Sess. at 1260 (codified at Minn. Stat. § 79.171 (Supp. 1979)).
208. See id. §§ 11, 50, 1979 Minn. Laws Ex. Sess. at 1261, 1287 (codified at Minn. Stat. §§ 79.21, 176.181(2) (Supp. 1979)).
209. The deregulation of workers' compensation insurance premium rates over a five year period and the creation of a state workers' compensation insurance fund to compete with private workers' compensation insurers were both recommended by the Workers' Compensation State Fund Study Commission created by the 1979 Legislature. WORKERS' COMPENSATION STATE FUND STUDY COMMISSION, A REPORT TO THE MINNESOTA LEGISLATURE AND GOVERNOR, 3-7 (1980). Legislation incorporating these recommendations has been introduced in both houses. Legislation has also been introduced, incorporating several recommendations of the previous study commission, which would limit liability for benefit payments in some situations, reduce benefit costs and attempt to further encourage return to work.

RECOMMENDATIONS OF THE
WORKERS' COMPENSATION STUDY COMMISSION

BENEFITS

1. The Legislature should eliminate temporary total or other weekly indemnity during the period that retraining benefits are being paid, but increase the weekly retraining amount by 15 percent during any week in which the claimant is participating in an approved retraining program.
2. The Legislature should prohibit payment of permanent total and permanent partial compensation for the same injury and provide for the payment of permanent partial compensation only upon the employee's return to work.
3. The Legislature should reduce the minimum weekly compensation benefit for temporary total disability to 66-2/3 percent of the wage at the time of the injury.
4. The Legislature should provide an offset against a workers' compensation indemnity award in the amount of the previous compensation where an existing disability has been compensated and that disability is aggravated by a work related injury.
5. The Legislature should provide for a maximum disability benefit of 200 percent of the state average weekly wage.
(National Commission on State Workmen's Compensation Laws, Recommendation #3.9, 3.16.)
6. The Legislature should permit recovery of benefits paid due to mistake of fact, but, in cases other than permanent partial lump sum awards, limit the recovery to no more than 20 percent of the weekly benefit payment, thereby protecting 80 percent of the weekly compensation.

7. The Legislature should provide that yearly adjustment of benefits be applied only after 104 weeks of disability.

8. The Legislature should provide for a specific list of internal organs which are intended to be covered by the statute and indicate the compensation to be paid for the loss of each organ under the permanent partial schedule.

9. The Legislature should remove the statutory presumption that heart and arterial disease and pneumonia suffered by peace officers are occupationally related and thus compensable.

10. The Legislature should remove the conclusive presumption of dependency on behalf of widows where death results from a work related injury and in its place create a conclusive presumption of dependency in favor of both widows and widowers. This presumption should exist for two years from the date of death during which time weekly compensation will be payable to the widow or widower. Following this period an offset of 50 percent of income earned by the surviving spouse should be applied to the weekly benefits until such time as 50 percent of the earned income is equal to the full benefit due at which time the right to further death benefits should cease.

11. The Legislature should provide that accrued benefits be paid to dependents if the employee dies prior to the payment of benefits.

12. The Legislature should provide for payment of death benefits to a child until age 25 if and while the child is enrolled as a full time student in an accredited educational institution. (National Commission on State Workmen's Compensation Laws, Essential Recommendation #3.25.)

13. The Legislature should extend mandatory workers' compensation coverage to all elected and appointed officials of

political subdivisions. (National Commission on State Workmen's Compensation Laws, Essential Recommendation #2.6.)

RETRAINING AND REHABILITATION

14. The Legislature should implement the following rehabilitation and retraining proposals of the Workers' Compensation Advisory Council. (The Advisory Council, a separate and distinct body from the Workers' Compensation Study Commission, is a permanent body created by statute to study workers' compensation.)

1. Any injury producing permanent disability which will prevent an employee from adequately performing the duties of the occupation held at the time of injury should be referred for rehabilitation consultation and subsequent services where feasible.

2. Vocational rehabilitation services should be those training services designed to return the individual to (1) a job related to former employment; (2) a job in a nonrelated work field which produces an economic status as close as possible to that enjoyed prior to the disability with priority given to the former where possible.

Rehabilitation to a job with higher economic status, then held before the disability, should be allowed if, as a practical matter and because of physical limitation this is the only vocation for which the individual can be trained.

3. Rehabilitation Administrators. The Commissioner of Labor and Industry should be authorized to hire qualified Administrators of Rehabilitation and other assistance as may be necessary to carry out the responsibilities laid out in this recommendation. These personnel should be responsible to the Commissioner.

It should be the responsibility of these Rehabilitation Administrators under the direction of the Commissioner of Labor and Industry to supervise the delivery of all rehabilitation services provided for. The Rehabilitation Administra-

tors should have the power to approve, modify or disapprove plans submitted to the Department.

In the event of a dispute by an insurer, employer or employee with respect to a plan approved, modified or rejected by the Administrator, upon the request of any party, the plan should be submitted to the Rehabilitation Review Panel for determination.

4. Rehabilitation Review Panel. There should be established a Rehabilitation Review Panel composed of the Commissioner of Labor and Industry or his designated Representative, equal representation from labor, employers, insurers, vocational rehabilitation, physicians and other medical specialties, each of whom should be qualified by experience and training and appointed by the Governor.

It should be the responsibility of this panel to review and make determination of appeals filed with regard to rehabilitation programs; hold revocation of approval hearings as necessary; continuously study rehabilitation, both physical and vocational, and develop and recommend rehabilitation regulations to the Commissioner of Labor.

5. Rules and Regulations. The Commissioner of Labor and Industry, in consultation with the Rehabilitation Review Panel and other interested parties, should promulgate rules and regulations governing approval of applications for accreditation of all public and private rehabilitation facilities and all functions, staffing, etc. desiring to provide workers' compensation rehabilitation services.

The Commissioner should approve any public or private rehabilitation facility or institution meeting the standards as set forth by rule. The Commissioner should have the authority to revoke approval, if after hearings by the Rehabilitation Review Panel, it is found such facility is not conducting itself according to the requirements of the regulations set forth by the Department.

6. Plan Formulation. Within 30 days or immediately when the employer/insurer has medical information that an injured employee will be unable to return to his pre-

political subdivisions. (National Commission on State Workmen's Compensation Laws, Essential Recommendation #2.6.)

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6. Plan Formulation. Within 30 days or immediately when the employer/insurer has medical information that an injured employee will be unable to return to his pre-

injury occupation or employment for which he has previous training or experience, the employer/insurer should provide for rehabilitation consultation for the employee. In case of failure by the employer/insurer to provide rehabilitation the rehabilitation administrator should notify the division of vocational rehabilitation so that it may provide these services. Upon determination that a program of rehabilitation would significantly reduce or eliminate the decrease in employability, the rehabilitation consultant should develop a specific plan for submission by the employer/insurer to the Rehabilitation Administration of the Department of Labor.

Disabled employees should be required to submit to all reasonable requests for examination and evaluations considered necessary to determine need for rehabilitation, or to develop a plan for rehabilitation and to cooperate in implementation once a plan has been developed and approved.

In developing the plan, consideration should be given to the employee's age, education, previous work history, interests and skills.

On-the-job training should be specifically allowed where such training would produce an economic status similar to that enjoyed prior to the disability.

If after consultation with an accredited rehabilitation facility it is felt, that due to the disabled worker's age, education, disability, etc., successful rehabilitation is unlikely that determination should be filed with the Rehabilitation Administrator.

7. Where on-the-job training is provided in the rehabilitation plan, the plan may compensate an employee up to the wages earned prior to disability in lieu of temporary total disability payments otherwise authorized by the Act, for a limited time. Such subsidization should be extended for an additional period upon request by the rehabilitation facility to the insurer/employer for an

extension if the extension is approved by the Rehabilitation Administrator.

Compensation in part or in full shall be made to an employer, who is willing to provide on-the-job training to a disabled worker when the on-the-job training would normally be economically disadvantageous.

8. Reporting. Upon approval of a rehabilitation plan by the Rehabilitation Administrator, the rehabilitation facility should provide periodic progress reports to the Department of Labor, employer and insurer.

9. Plan Modifications. Upon application by an employer, insurer, or disabled worker to the Rehabilitation Administrator, the plan should be suspended, terminated or changed upon a showing of good cause, including but not limited to:

- a. A physical impairment that would not allow the worker to follow the vocation being trained for;
- b. The worker's performance level indicates he cannot complete the course satisfactorily;
- c. The worker fails or refuses to cooperate in the program;
- d. The worker requests termination of the program in favor of a different program because he feels he is not suited for the type of work for which training is being provided. A change of program for this reason should only be ordered once, and only if the request is made by the worker within 90 days after commencement of the training period.

Appeal of such a change should be filed with the Administrator within 15 days for hearing by the Rehabilitation Review Panel for final determination.

10. Rehabilitation Costs. Rehabilitation expenses to be covered by the employer should be limited to:

- a. Cost of vocational rehabilitation diagnosis and formulation of plan.

b. Cost of all rehabilitation services and supplies deemed necessary for the implementation of the approved plan.

c. Tuition, books and the reasonable costs of board, lodging and travel when rehabilitation requires residence away from the employee's customary residence.

d. Any other necessary expense agreed to by the insurer/employer.

ADMINISTRATION

Department of Labor and Industry

15. The Legislature should provide the Commissioner of Labor and Industry with the authority to promulgate by rule, schedules which would permit an objective assessment of degree of disability. In promulgating these rules the Commissioner should examine the schedules in use in Wisconsin, California, and other states, that of the American Medical Association and other appropriate sources. The Legislature should provide additional funding to the Department of Labor for this purpose.

16. The Department of Labor and Industry should consult with the medical and chiropractic professions to develop a medical fee schedule.

17. The Department of Administration should, with the option of hiring outside consultants, study and make recommendations for the improvement of the Department of Labor and Industry data and recordkeeping systems, with special attention to computer and microfilming applications.

18. The Legislature should provide for an increase in the staff of the Department of Labor and Industry which monitors self-insuring employers.

Notice

19. First reports of injury should be completed by the employer in triplicate, with copies submitted to the insurer and the Workers' Compensation Division.

20. The Legislature should provide that the current requirement that notice of injury must be given to an employer within 180 days after the injury, is not satisfied by notification to the employer by a medical carrier that an employee is receiving treatment or payments for such medical treatment, unless the notice expressly indicates that the treatment is for a work related condition.

21. Where an employee is unable, because of mental or physical incapacity, to give notice of injury to the employer within 180 days from the injury, the time within which the employee should be required to give notice should be extended to 180 days from the date the incapacity ceases.

22. The Commissioner of Labor and Industry should furnish to employers covered by workers' compensation a booklet explaining their rights and obligations under the statutes and rules.

23. The Commissioner of Labor and Industry should develop an informational brochure to be distributed to employees upon first report of injury. The brochure should minimally include an injured employee's rights under the law, assistance available to the employee, and the operation of the compensation system.

24. A notice advising employees of their rights under the law, assistance available to them, and the operation of the compensation system should be posted in all places of employment.

Workers' Compensation Court of Appeals

25. The Legislature should expand the Workers' Compensation Court of Appeals to five members. Of these five members, two members should be appointed to represent employees, two members should be appointed to represent employers, and one member should be a neutral public representative. The neutral individual and at least one of the employee and one of the employer representatives should be required to be learned in the law.

26. The Workers' Compensation Court of Appeals should be physically separate from the Division of Workers' Compensation.

27. Additional hearing rooms should be made available by the Legislature to the Workers' Compensation Division.

28. The Legislature should permit a workers' compensation judge to consider the workers' compensation expertise of the attorney when awarding fees.

Special Fund

29. The Legislature should establish a reopened case fund which will be liable for any compensation due an employee resulting from a reopening of a workers' compensation claim if that case is reopened 7 years from the date of an injury or 3 years from the date of the last compensation payment, whichever is later. In addition, the Legislature should preclude the reopening of claims against the fund if the claim is made more than 18 years from the injury or 8 years from the last payment of an original award, whichever is later.

30. The Legislature should permit an employer to register an employee's pre-existing condition with the "special fund" subsequent to as well as prior to an injury to the employee.

31. The Legislature should provide that investment income from the "special fund" be placed back in the fund, rather than in the general fund.

32. The Legislature should provide that liability for aggravation of existing injuries to individuals in on-the-job training should be assessed against the "special fund" and not the employer.

33. The Legislature should provide the Commissioner of Labor and Industry the power to authorize the payment, from the "special fund," of benefits to an employee who suffers a work related injury, when the Commissioner determines the injury is work related and the sole issue is which insurer is liable. When liability is determined the special fund should be reimbursed by the liable party.

Medical

34. The Legislature should require the compensation judges to appoint a neutral doctor for a third medical opinion at the request of either party in contested cases. A list of neutral doctors should be developed by the Department of Labor and Industry.

35. The Legislature should require a mandatory second opinion on certain elective surgical procedures covered by workers' compensation.

36. The Legislature should provide that medical carriers pay medical benefits when there is a dispute of primary liability, and provide that the workers' compensation carrier be billed if workers' compensation liability is then established.

Department of Insurance

37. The Legislature should eliminate the ceiling on salaries for hiring an actuary by the Insurance Commissioner.

38. The Legislature should increase the staff of the Insurance Division to assist with rate determination, with special emphasis given to employing legal assistance and an economist.

Rating Bureau

39. The Legislature should change the name of the "Minnesota Compensation Rating Bureau" to the "Workers' Compensation Rating Association of Minnesota" as of October 1, 1979.

40. The Legislature should prohibit suits, by an employee entitled to workers' compensation benefits, against a fellow employee except when the fellow employee has caused the worker's injury intentionally or through acts of gross negligence.

41. The Legislature should provide that employees give notice to their employers in all cases where the employee is filing a claim for or seeking a change in compensation, retraining or other workers' compensation benefits.

INSURANCE/RATEMAKING

42. The Legislature should prohibit retroactive rate adjustment.

43. The Legislature should give the Commissioner of Insurance the authority to establish by rule an automatic rating formula (to be developed with the assistance of the insurance industry and other interested parties) which will allow premiums to be automatically adjusted as a result of legislated benefit changes. The automatic increase as well as the benefit changes should take effect on January 1.

44. The Commissioner of Insurance should review during rate hearings any automatic rate changes which have taken effect

since the previous rate hearing and the Commissioner should have the authority to grant a rescission and prospective premium reduction as necessary.

45. The division of payroll for the purposes of rate calculation should be allowed upon the request of an employer if an employee falls within two rate classifications and the employer's records support such division.

46. The Legislature should provide a formal hearing process before the Commissioner of Insurance for employers appealing a compensation rating bureau classification decision and allow the Commissioner to alter classifications and determine adequate applicable rates.

47. The Legislature should establish a state reinsurance fund which would provide exclusive coverage for all benefits due on claims continuing after five years from the date of injury. Coverage should be provided directly to insurers and self-insurers. The reinsurance fund should operate on a premium basis rather than by assessments, and initial funding should be provided by the sale of revenue bonds.

48. The Commission recommends that the Commissioner of Insurance prohibit assigned risk pool insurers from receiving a higher expense loading than is allowed for non-assigned risk pool coverage, except for actual adjustment expenses, as opposed to the current practice of including loss adjustment with other expense items.

49. The Commission recommends that the Commissioner of Insurance consider and recommend to the Legislature alternative modes of conducting rate hearings in which the format would be more consistent with his position as neutral arbiter than the present Chapter 15 rule-making method in which the Commissioner proposes the rate.

50. The Commissioner of Insurance should establish a maximum wage base (in relation to maximum benefits) upon which premiums are to be calculated.

51. The Commissioner of Insurance should require insurers to extend the experience-rating system to more employers than are now covered by the \$750 premium minimum.

52. The Commissioner of Insurance should require insurers to use life expectancy tables, if available, appropriate for persons with equivalent disabilities when establishing case reserves.

53. The Commissioner of Insurance should require the rating bureau to separate incurred but not reported losses from other reserve components and explain how such amounts have been determined.

54. The Commissioner of Insurance should require the rating bureau to separate paid and outstanding losses in rate proposals.

55. The Commissioner of Insurance should require insurers to give notice when an individual workers' compensation case reserve is established which is in excess of \$50,000.

56. The Commissioner of Insurance should consider insurers' investment income on workers' compensation reserves when establishing rates.

57. Pain should be retained as a compensable consideration in disability indemnification.

MOTIONS DEFEATED

1. Apportionment of permanent partial disability between work related and non-work related conditions.
2. Reduction in permanent partial disability benefits of 2-1/2 percent for each year an employee is over 52, with the maximum reduction being 50 percent.
3. Limit the receipt of death benefits to 1,000 weeks.
4. Remove the present prohibition on attorneys' fees being paid from supplemental benefits unless the receipt of such benefits is the only issue in the case.
5. Permit an employee's legal fees to be recovered from the special compensation fund when the only item in dispute is whether the insurer is entitled to reimbursement from the fund and the fund is eventually found liable for such reimbursement.
6. Workers' compensation claims for state employees shall be handled by the Department of Personnel, rather than the Department of Labor and Industry.
7. Require the Commissioner of Insurance to establish rates based only on pure premiums (anticipated losses only) with the expense loading allowed to float in open competition.
8. Insurance rates should be determined by open competition.
9. Establish a competitive state fund to compete with commercial insurers in providing workers' compensation coverage.
10. Transfer the statutory rating functions of the rating bureau to the Commissioner of Insurance.

MINORITY RECOMMENDATIONS
FROM THE
WORKERS' COMPENSATION STUDY COMMISSION

1. Establish a competitive state insurance fund.
2. Retain the present system of competitive, commercially-provided reinsurance in workers' compensation.
3. Provide for the apportionment of liability between pre-existing non-occupational conditions and occupational injuries when the two combine to produce a permanent partial disability.
4. Retain the present maximum disability benefit 100 percent of the state average weekly wage, rather than increase the maximum to 200 percent.
5. Provide for the reduction of permanent partial disability benefits when an employee is over the age of 52 at the time of injury, by 2-1/2 percent for each year above that age to a maximum reduction of 50 percent.
6. Provide for a legal presumption of the reasonableness of settlements entered into by an insurer or employer and a claimant when both are represented by an attorney.
7. Provide that weekly benefit payments be calculated to the nearest \$1.00.
8. Permit a workers' compensation judge to make a factual determination of the degree of disability within the range established by the physicians' opinions when these opinions differ significantly.
9. Replace the state average weekly wage, the current maximum weekly amount used in the computation of permanent partial awards, with the dollar figure of \$200.

10. The statutory rating functions of the rating bureau be transferred to the Commissioner of Insurance.

11. The National Council of Compensation Insurers (NCCI) be prohibited from involvement in the Minnesota rate setting process.

12. The Rating Compensation Bureau members represent the insurance industry, business, labor and the public.

13. Congress be memorialized to repeal interstate immunity of the insurance industry (McCarron-Ferguson Act).

14. The current expense factor used in rate-making and expenses incurred by the insurance companies for administering the premium dollars be set by law.

15. All Commission recommendations dealing with benefit reductions be disregarded.

16. Wages for vacations, holiday and sick leave should not be included in premium calculations and rates for workers' compensation.

House of Representatives

RESEARCH DEPARTMENT

17 STATE CAPITOL
ST. PAUL 55155
(612) 296-6753



Peter B. Levine
Director

September 19, 1979

Administrative Assistant
Barbara Heikes
Legislative Assistant
Karin Johnson

Legislative Analysts
Karen M. Baker
James D. Cleary
Gary P. Currie
Barbara L. Diamond
John J. Kostovich
John Helland
Stephen D. Hinze
Alan R. Hopeman
Kevin P. Kenney
Kathryn Lamp
Deborah K. McKnight
Joel T. Michael
Samuel W. Rankin
Douglas P. Seaton
Emily Shapiro
Mark Shepard
Jonathan Steinberg
Thomas M. Todd
John Williams

TO: Members, House Governmental Operations Committee

FROM: Douglas P. Seaton, Legislative Analyst

RE: Summary of Chapter 3, 1979 Special Session, the Workers' Compensation Act

The following is a summary of Chapter 3, the major workers' compensation statute of 1979. The bill was identical to H.F. 946/S.F. 917 as reported by the Conference Committee, with minor technical changes, and incorporates most of the Study Commission recommendations.

RATEMAKING (Sections 1-12) [Rec. No. 39, 42, 43, 44]

Sections 1-12 establish and modify procedures and requirements in the workers' compensation rate-making process, permit rates lower than those approved and disallow certain inclusions in premium calculation. Specific provisions follows.

DEFINITIONS, RATING BUREAU NAME CHANGE [Rec. No. 39, 46, 49, 51]

Section 1 inserts definitions of interested party and schedule of rates to permit employer associations, the reinsurance association and the insurance division to take part in rate hearings, and to include experience-rating and discount systems in the rate review. The Minnesota Compensation Rating Bureau is also renamed the Workers' Compensation Rating Association of Minnesota.

RATE-MAKING HEARING [Rec. No. 49]

Section 2 provides a formal procedure to be followed by the commissioner of insurance in the rate-making process in workers' compensation, as was recommended by the Study Commission. The commissioner of insurance may hold a hearing to modify rates on petition from an interested party, but may decline within 30 days if insufficient data has been provided or need is not demonstrated. Chapter 15 contested case procedures are to be followed in any hearings, with provision for liberal evidentiary rules and the burden of proof on the petitioner. The commissioner within 90 days may modify the rates as determined in the hearing where evidence supports

him and may hire an actuary or others to assist him in the hearings, the cost to be assessed to insurers. The hearing examiner may hire assistants as well. Excessive, inadequate or unfairly discriminatory rates are disallowed.

RE-HEARINGS [Rec. No. 49]

Section 3 includes procedures for an interested party to petition for a rehearing within 30 days of the commissioner's rate determinations. The commissioner may decline to rehear, but if he does so he may modify his determination on adequate factual grounds including errors in the hearing or changes since the original petition.

JUDICIAL REVIEW [Rec. No. 49]

Section 4 provides for discretionary judicial review of the commissioner's rate determinations without suspension of the rates.

DISCRIMINATORY RATES [Rec. No. 49]

Section 5 adds provisions against unfairly discriminatory rates and dividends in workers' compensation.

AUTOMATIC RATE ADJUSTMENTS [Rec. No. 42, 43, 44]

Section 6 inserts statutory language providing for automatic adjustment of rates to reflect legislative benefit changes as recommended by the Study Commission as a substitute for retroactive increases. The commissioner may later review the increases in the rate hearings.

RATE MANUAL [Rec. No. 49]

Section 7 specifies the applicability of new rates and prescribes standards for the amendment of the manual of rates. The current rate manual may be approved, but a hearing must be held, if petitioned for, on certain portions of the manual (see section 65). The manual would remain in effect during the hearing. Amendments to the manual would be by contested case hearing.

INSURANCE ACTUARY [Rec. No. 37]

Section 8 lifts the salary ceiling limiting an actuary in the insurance division to 90% of the commissioner's salary.

REGULATION [Rec. No. 46]

Section 9 provides new language relating to acts and decisions of insurers. The insurance division may investigate, conclude findings and propose orders under chapter 79 on petition of any person. Contested case hearings are provided.

RATING BUREAU DATA REPORTING [Rec. No. 53, 54, 55, 56]

Section 10 requires the rating bureau to provide more detailed information on losses and to report investment income on reserves, as well as each reserve over \$50,000, and empowers the commissioner of insurance to refuse

a rate hearing if data is not provided.

COMPETITIVE RATES [Related to Defeated Motions 7, 8]

Section 11 permits an insurer to offer premiums lower than the approved rates.

HOLIDAY TIME AND DIVISION OF PAYROLL [Rec. No. 45, Minority Rec. 16]

Section 12 disallows the inclusion of vacation, holiday or sick time in workers' compensation premium calculations, and requires the division of an employer's payroll among different rating classifications when his records are adequate to justify this.

REOPENED CASE FUND (See Section 43) [Rec. No. 29]

Section 13 provides for the commissioner's annual review of the reopened case fund and recommendation of assessments.

INDEPENDENT CONTRACTORS' PAYROLL EQUIVALENTS

Section 14 permits the commissioner of insurance to establish a formula to determine the remuneration of contractors when payroll cannot be determined.

ASSIGNED RISK POOL [Rec. No. 48]

Section 15 prohibits additional expense allowances for assigned risk policies.

EXPERIENCE RATING/ACTUARIAL TABLES [Rec. No. 51, 52]

Section 16 permits the commissioner of insurance to study the extension of experience-rating to smaller employers and to require the use or development of actuarial tables appropriate for the disabled.

REINSURANCE ASSOCIATION (Sections 17-25) [Rec. No. 47]

Sections 17-25 create a mandatory reinsurance association whose members would include all workers' compensation insurers and self-insurers. The reinsurance association would be liable for all payments over \$300,000 or \$100,000 at the members' option arising from a single occurrence. These amounts would be indexed to rises in the state average weekly wage. Liability would begin October 1, 1979. Specific provisions follow.

FUND, MEMBERSHIP, LIABILITY [Rec. No. 47]

Section 17 creates the reinsurance association, makes membership mandatory for all insurers and self-insurers under chapter 176 and exempts the reinsurance association from chapter 15. The threshold for reinsurance association liability is set at \$300,000 or \$100,000 at the members' option and indexing is provided for. The reinsurance association is made liable for insolvencies among its membership. Mergers would not extinguish members' liabilities. Reserving above the reinsurance association's liability threshold by insurers is prohibited.

POWERS [Rec. No. 47]

Section 18 specifies the duties and powers of the reinsurance association including liability as prescribed in section 17, procedures for claims reports from members, record-keeping, annual reports to members, review of members' practices relative to the reinsurance association and calculation and charging of premiums, sufficient to cover losses and operating expenses, in the form of a fixed percentage of premium. Premiums are to be calculated to generate reserves on losses of \$500,000 or less, but higher losses are to be paid as they are due.

POWERS [Rec. No. 47]

Section 19 prescribes additional powers including powers to sue and be sued, to commercially reinsure all or part of the reinsurance association's liability, provide and contract for facilities, services, staff and equipment, adopt rules, intervene in any proceeding likely to affect the reinsurance association, hear complaints and do other acts necessary or proper to the operation of the reinsurance association.

BOARD OF DIRECTORS [Rec. No. 47]

Section 20 creates a board of directors of the reinsurance association to consist of nine members representing insurers (4), employers (3) and employees (2). The commissioner of insurance is a non-voting member. Action is by a majority of those present.

PLAN OF OPERATION (See Section 25) [Rec. No. 47]

Section 21 provides that the plan of operation to be adopted by the initial reinsurance association board shall include a preliminary premium for start-up costs, procedures for calculating and charging premiums, board members' compensation, terms and the like, investment policies, provision for facilities and administration.

REGULATION BY INSURANCE COMMISSIONER [Rec. No. 47]

Section 22 makes the reinsurance association subject to regulation by the commissioner of insurance under chapter 79 as are other workers' compensation insurers.

INCLUSION OF PREMIUM IN RATES [Rec. No. 47]

Section 23 provides that the premium charged by the reinsurance association will be treated in the same manner as special fund assessments in insurers' rate-making under chapter 79.

PROVISIONAL BOARD OF DIRECTORS [Rec. No. 47]

Section 24 gives the commissioner of insurance power to appoint a provisional board of directors of the reinsurance association.

PLAN OF OPERATION (See Section 21) [Rec. No. 47]

Section 25 requires this board to develop and submit to the commissioner a plan of operation for the reinsurance association. If the board does not the commissioner is empowered to develop and implement one. The plan would be subject to the approval of the commissioner and the membership.

APPEALS COURT [Related to Rec. No. 25]

Section 26 increases the number of Workers' Compensation Appeals Court judges from three to five and would permit no more than two to be laymen.

LOCATION WORKERS' COMPENSATION COURT OF APPEALS [Rec. No. 26]

Section 27 provides for a location for the workers' compensation court of appeals separate from the offices of the department of labor and industry.

Section 28 is technical.

PEACE OFFICER PRESUMPTION [Contra Rec. No. 9]

Section 29 retains the current presumption of work-relatedness for certain conditions of peace, fire and other officers and adds DNR forest officers to those to whom the presumption applies.

CONCURRENT PAYMENTS [Rec. No. 11, Related to Rec. No. 2]

Section 30 permits concurrent payment of temporary partial, temporary total or permanent total benefits with permanent partial benefits, but would require payment of permanent partial benefits in 25% installments each month after the first, until return to work, when all remaining payments would be made.

CO-EMPLOYEE LIABILITY [Rec. No. 40]

Section 31 limits the liability of a co-employee of the injured employee to intentional or grossly negligent acts.

EXPERTISE OF ATTORNEY CONSIDERED IN FEES [Rec. No. 28]

Section 32 allows the workers' compensation judge to consider an attorney's expertise in workers' compensation in setting fees.

MAXIMUM AND MINIMUM BENEFIT [Contra Rec. No. 3, 5, See Minority Rec. No. 4]

Section 33 retains the current maximum benefit of 100% of the state average weekly wage (SAWW) for temporary total. (No one would receive more than 66-2/3% of his actual wage.) The minimum benefit for temporary total of 50% of the SAWW is also retained.

MAXIMUM BENEFIT AND INTERNAL ORGAN SCHEDULE [Rec. No. 8, Contra Rec. No. 5,
See Minority Rec. No. 4]

Section 34 retains the 100% maximum benefit for permanent partial benefits and deletes some extraneous language. The schedule of internal organs in the original bill is deleted and replaced with a power in the commissioner of labor to promulgate such a schedule by rule.

Section 35 is technical.

REHABILITATION AND RETRAINING BENEFITS [Rec. No. 1, 14]

Section 36 provides comprehensive procedures for rehabilitation under workers' compensation. This section stresses comparable employment and on-the-job training. Retraining to a higher status would be permitted when employability would be increased. Employers' role in selecting rehabilitation providers is increased and private providers may be approved by the commissioner of labor. The employer would be required to offer rehabilitation and develop a plan within 30 days of knowing rehabilitation is necessary. The employee would retain the power to select a rehabilitation-provider. On-the-job trainees would receive their full after-tax pre-injury wage and other retraining claimants would receive 125% of the usual temporary total benefits. The commissioner would approve rehabilitation plans subject to review by a review panel.

DEATH BENEFITS [Rec. No. 12, Related to Rec. No. 10]

Section 37 provides that both spouses are eligible for death benefits, and permits children who are students to receive benefits until age 25.

SPECIAL FUND LIABILITY FOR ON-THE-JOB TRAINING INJURIES [Rec. No. 32]

Section 38 provides that the special fund would be liable for additional payments under workers' compensation when an on-the-job training employee is injured.

REGISTRATION OF PREVIOUS IMPAIRMENTS [Rec. No. 30]

Section 39 specifies that registration of pre-existing physical impairments after an injury must be based on medical reports prior to the injury. Registration would mean that the Special Fund would pay benefits after a second injury after 52 weeks.

SPECIAL FUND TO RETAIN INVESTMENT INCOME [Rec. No. 31]

Section 40 requires investment income to be retained in the workers' compensation special fund rather than be paid into the general fund.

SUPPLEMENTARY BENEFITS

Section 41 increases benefits under the supplementary benefit provision from 60% to 65% of the SAWW. This section affects older claims.

BENEFIT CHANGES' EFFECTIVE DATE [Related to Rec. No. 43]

Section 42 would make legislative benefit changes effective the October 1 after enactment.

REOPENED CASE FUND (See Section 14) [Rec. No. 29]

Section 43 provides a new reopened case fund which would assume liability for all new claims filed after 7 years from the injury, and all new reopenings of old claims 7 years after the injury or three years after the last benefit payment, whichever is later. A time limit on this fund's liability in the original bill was deleted.

SECOND SURGICAL OPINION [Rec. No. 35]

Section 44 provides for a mandatory second opinion before surgery is performed in workers' compensation. If either opinion favored surgery the employee could choose surgery.

EXCESSIVE MEDICAL CHARGES [Related to Rec. No. 16]

Section 45 empowers the commissioner of labor to identify excessive charges for particular medical services and to establish reasonable charges in such cases.

POSTED NOTICE OF RIGHTS [Rec. No. 24]

Section 46 requires the posting of a notice of employees' rights and obligations under the workers' compensation statute at work places.

NOTICE BY EMPLOYEE OF INJURY [Rec. No. 21]

Section 47 provides that an employee who is unable to give notice within the 180 days now required, may do so within 180 days of the end of his incapacity.

NEUTRAL PHYSICIAN'S OPINION [Rec. No. 34]

Section 48 would give either party a right to a neutral physician's opinion on a claim when requested at least 30 days prior to pre-hearing. The commissioner of labor would determine neutrality.

RECOVERY OF MISTAKEN PAYMENTS [Rec. No. 6]

Section 49 permits erroneous benefits to be recovered from future benefits at a rate not to exceed 20% of the weekly rate.

TRANSFER OF SELF-INSURANCE REGULATION TO COMMISSIONER OF INSURANCE [Related to Rec. No. 18]

Section 50 transfers responsibility for administration of employers' self-insurance under workers' compensation from the commissioner of labor to the commissioner of insurance. This section also requires chapter 15 procedures for determination of standards and requirements for such self-insurance and requires licensing and regulation of administrators of group self-insurance programs.

SELF-INSURING POLITICAL SUBDIVISIONS INDEMNITY

Section 51 permits indemnification of political subdivisions which self-insure for workers' compensation payments in excess of their self-insurance premiums and assets, subject to repayment.

PAYMENTS WHEN LIABILITY DISPUTED, DETERMINED LATER [Rec. No. 33, 36]

Section 52 requires an employer or insurer to reimburse the department of welfare if workers' compensation liability is later established for medical treatment paid for at public expense. This section otherwise provides that benefits shall be paid by the special fund when liability is disputed between workers' compensation insurers and recovered when it is established. A medical carrier would also pay and recover medical costs later if workers' compensation liability were established.

PENALTIES FOR FAILURE TO MAKE PAYMENTS

Section 53 imposes monetary penalties for failure to pay or deny liability for treatment charges or retraining expenses within 30 days of notice of the injury to the employer or insurer. (Failure to pay compensation itself is already penalized.)

NOTICE TO INSURER [Rec. No. 19]

Section 54 requires an employer to notify the insurer in addition to the commissioner of labor, when an injury occurs.

NOTICE TO COMMISSIONER OF LABOR [Rec. No. 19]

Section 55 requires a quadruplicate notice of injury to the commissioner.

BROCHURE FOR EMPLOYEES AND EMPLOYERS ON WORKERS' COMPENSATION [Rec. No. 22, 23]

Section 56 provides for a brochure for both employees and employers explaining the operation of the workers' compensation system.

DISCONTINUANCE OF BENEFITS

Section 57 requires employers or insurers to provide reasons for the discontinuance of benefits before benefits may be discontinued.

NOTICE OF INTENT TO CHANGE BENEFITS [Rec. No. 41]

Section 58 provides for notice to the insurer or employer before proceedings are initiated to claim or change benefits except where this would result in a claim being barred by time limits.

NEUTRAL PHYSICIAN'S OPINION (See Section 48) [Rec. No. 34]

Section 59 requires that neutral physicians be appointed from the list to be maintained by the commissioner of labor.

INTERVENORS' APPROVAL OF SETTLEMENTS

Section 60 requires settlements of workers' compensation claims to be signed by intervenors who have an interest in the result.

STUDY OF DEPARTMENT OF LABOR WORKERS' COMPENSATION RECORDKEEPING [Rec. No. 1]

Section 61 provides for a study of the department of labor's recordkeeping systems by the department of administration.

COMMISSIONER OF LABOR TO PROMULGATE ORGAN AND DISABILITY SCHEDULES [Rec. No. 8, 15]

Section 62 includes power to the commissioner of labor to promulgate by rule a schedule of internal organs, and a general disability schedule.

ADDITIONAL HEARING ROOMS [Rec. No. 27]

Section 63 provides for three additional workers' compensation hearing rooms.

SECOND OPINION STUDY (See Section 44) [Related to Rec. No. 35]

Section 64 provides for a study of the second surgical opinion required for workers' compensation surgery with a report January 1, 1983.

CHALLENGE TO CURRENT RATE MANUAL [Related to Rec. No. 49, 51]

Section 65 permits certain sections of the current rate manual to be challenged under chapter 15 by an interested party within 90 days of this bill's enactment. The manual would remain in effect during the hearing.

APPOINTMENT OF JUDGES (See Section 26) [Related to Rec. No. 25]

Section 66 requires the appointment of two additional Workers' Compensation Appeal Court judges by August 1, 1979.

JOINT LEGISLATIVE STUDY COMMISSION ON FEASIBILITY OF A STATE COMPETITIVE FUND [Related to Minority Rec. No. 1, Defeated motion 9]

Section 67 provides for a joint legislative commission of six members from each house to study the feasibility of a state competitive fund and report to the legislature by January 1, 1981.

Section 68 is technical. [Related to Rec. No. 39]

APPROPRIATIONS [Related to many Recs., specifically Rec. No. 18, 38]

Section 69 is a general appropriation section. Amounts are as follows (staff numbers in parentheses):

	<u>1980</u>	<u>1981</u>
Attorney General	\$ 35,000 (1)	\$ 72,500 (3)
Commissioner of Insurance (7)	\$189,700	\$184,100
Commissioner of Labor (8)	\$383,600	\$323,700
State Fund Study Commission	\$ 25,000	→

REPEALER [Related to Rec. No. 1, 14, 25, 49]

Section 70 repeals the former rate-making sections in chapter 79, the current retraining benefits provision, and a provision, now unnecessary, allowing compensation judges to serve temporarily on the Workers' Compensation Appeals Court.

EFFECTIVE DATES

Section 71 provides that the rate-making sections and the start-up provisions (not liability) of the reinsurance association are effective the day after enactment and the reinsurance association itself effective October 1, 1979. The Rating Bureau name change is also effective October 1, 1979. Benefit changes are effective October 1, pursuant to section 42. The balance of the bill is effective August 1.

COMPARISON OF S.F. 1 AND STUDY COMMISSION REPORT

Forty-six of the fifty-seven Workers' Compensation Study Commission recommendations were enacted in substantially the same form as originally proposed. Three of the recommendations (Nos. 2, 10 and 25) were enacted in significantly modified form and eight recommendations were not enacted (Nos. 3, 4, 5, 7, 9, 13, 20 and 50). Two minority recommendations (Nos. 4 and 16) were enacted and another change was made which related to two defeated motions (Nos. 7 and 8). One minority recommendation (No. 1) is to be studied. One minority recommendation (No. 6) was passed as a separate bill and another (No. 8) was passed by the Senate.

The major differences between the Study Commission's recommendations and S.F. 1 are as follows:

Concurrent Payments of permanent total and permanent partial benefits are still permissible under S.F. 1, though permanent partial payments are partially delayed (25% each month until return to work, balance then). [Rec. 2]

Minimum Benefit for Temporary Total Benefits is retained in S.F. 1. [Rec. 3]

Offset in Amount of Previous Workers' Compensation, Tort, or Other Compensation was deleted in S.F. 1. [Rec. 4]

Maximum Benefit of 200% of SAWW was not enacted in S.F. 1. The current 100% maximum was retained. [Rec. 5, Minority Rec. 4]

104 Week "Waiting Period" Before Escalation Application was deleted in S.F. 1. [Rec. 7]

Presumption of Compensibility for Certain Conditions of Peace, Fire Officers was retained in S.F. 1 and DNR forest officers were added. [Rec. 9]

50% Offset for Spouse's Earnings Against Death Benefits was deleted in S.F. 1. [Rec. 10]

Mandatory Coverage for Public Officials was not enacted in S.F. 1. [Rec. 13]

Medical Carrier Treatment Notice Not Notice of Work-Related Injury was deleted in S.F. 1. [Rec. 20]

Workers' Compensation Appeals Court to Represent Employers, Employees and Public was not included in S.F. 1 though the increase to 5 judges and provision for lay judges were incorporated. [Rec. 25]

Maximum Wage Base Calculation of Premium was not included in S.F. 1. [Rec. 50]

Vacation, Holiday and Sick-Time Exclusion from Premium Calculation was included in S.F. 1. [Minority Rec. 16]

Authority to Charge Premiums Lower than the Approved Rate is provided in S.F. 1. [Related to Defeated Motions 7, 8]

- * Presumption of Legality of Settlements When Parties Represented by Attorneys was passed separately by the Legislature as S.F. 1047. [Minority Rec. 6]
- * Authority for Workers' Compensation Judges to Enter a Finding of Degree of Disability Inbetween Those of the Parties passed the Senate as S.F. 1338 but was not returned from the House. It was referred to the Labor-Management Relations Committee of the House.

DPS:dr

CROSS-REFERENCE KEY: WORKERS' COMPENSATION
STUDY COMMISSION REPORT AND Ch. 3 AS ENACTED

<u>Ch. 3 Sections</u>	<u>Workers' Compensation Study Commission Recommendation</u>
Section 1	Rec. 39, 46, 49, 51
Section 2	Rec. 49
Section 3	Rec. 49
Section 4	Rec. 49
Section 5	Rec. 49
Section 6	Rec. 42, 43, 44
Section 7	Rec. 49
Section 8	Rec. 37
Section 9	Rec. 46
Section 10	Rec. 53, 54, 55, 56
Section 11	[See Defeated Motions 7, 8]
Section 12	Rec. 45 [See Minority Rec. 16]
Section 13	Rec. 29
Section 14	[New]
Section 15	Rec. 48
Section 16	Rec. 51, 52
Section 17	Rec. 47
Section 18	Rec. 47
Section 19	Rec. 47
Section 20	Rec. 47
Section 21	Rec. 47
Section 22	Rec. 47
Section 23	Rec. 47
Section 24	Rec. 47
Section 25	Rec. 47
Section 26	Rec. 25
Section 27	Rec. 26
Section 28	[Technical]
Section 29	Rec. 9 [Contra]
Section 30	Rec. 2 [Modified], 11
Section 31	Rec. 40
Section 32	Rec. 28
Section 33	Rec. 3 [Contra], 5 [Contra]
Section 34	Rec. 5 [Contra], 8
Section 35	[Technical]

Ch. 3 SectionsWorkers' Compensation Study
Commission Recommendation

Section 36	Rec. 1, 14
Section 37	Rec. 10 [modified], 12
Section 38	Rec. 32
Section 39	Rec. 30
Section 40	Rec. 31
Section 41	[New]
Section 42	Rec. 43
Section 43	Rec. 29
Section 44	Rec. 35
Section 45	Rec. 16 [modified]
Section 46	Rec. 24
Section 47	Rec. 21
Section 48	Rec. 34
Section 49	Rec. 6
Section 50	Rec. 18 [modified]
Section 51	[New]
Section 52	Rec. 33, 36
Section 53	[New]
Section 54	Rec. 19
Section 55	Rec. 19
Section 56	Rec. 22, 23
Section 57	[New]
Section 58	Rec. 41
Section 59	Rec. 34
Section 60	[New]
Section 61	Rec. 17
Section 62	Rec. 8, 15
Section 63	Rec. 27
Section 64	Rec. 35
Section 65	Rec. 49, 51
Section 66	Rec. 25
Section 67	[See Minority Rec. 1]
Section 68	Rec. 39
Section 69	[Many Recs.]
Section 70	Rec. 1, 14, 25, 49
Section 71	[Effective Dates.]

MINNESOTA HOUSE OF REPRESENTATIVES

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