REPORT

of the

INTERIM COMMISSION

on

WORKMEN'S COMPENSATION

to

Revise and Codify the Laws of this State, Relating to Workmen's Compensation Created by Minnesota Session Laws 1951 c. 708

Submitted to
The Minnesota Legislature
of 1953

CONTENTS

Members of the Interim Commission on Workmen's Compensation:

Senator Milton C. Lightner

Senator Gerald T. Mullin

Senator C. C. Mitchell

Representative Alf. L. Bergerud

Representative E. J. Windmiller

Representative D. D. Wozniak

ACT CREATING COMMISSION

Chapter 708-S. F. No. 1516

AN ACT creating a commission composed of members of the House and Senate, authorizing and directing such commission to make a study and investigation of the laws relating to workmen's compensation, and preparing a bill revising and codifying such laws for presentation at the next regular legislative session, and appropriating money therefor.

Be it Enacted by the Legislature of the State of Minnesota:

Section 1. That a commission of six members be and hereby is created, to consist of three members of the House of Representatives to be appointed by the Speaker, and three members of the Senate to be appointed by the Committee on Committees of the Senate, to revise and codify the laws of this state relating to workmen's compensation. Such appointment shall be made forthwith upon the passage of this act, and the commission shall designate one of its members to act as chairman.

Section 2. It shall be the duty of said commission to examine the existing laws of this state relating to workmen's compensation and to prepare, propose and recommend such revision and codification as shall in its opinion simplify, harmonize and complete the same and be most effective and suitable toward effectuating the ends sought to be gained by such laws. The commission shall file its report of such revision and codification, with such explanation thereof as may be necessary, not later than the opening day of the next regular legislative session. The commission is further authorized and directed to prepare the form of a bill or bills for presentation at the next regular legislative session.

Section 3. The commission shall have the authority and power to hold hearings at such times and places as it may designate for the purpose of taking such evidence and testimony as may be necessary or helpful in effectuating the purposes of this act. A stenographic record of all proceedings shall be kept by the commission.

Section 4. The members of the commission shall serve without pay, but shall be allowed and reimbursed for all

expenses reasonably and necessarily incurred in the performance of its duty, within the limit of the appropriation provided herein. The commission is vested with full power and authority to employ clerical aid and assistance, to purchase stationery and other supplies, and to do any and all things reasonably necessary or convenient in carrying out the purposes of this act.

Section 5. There is hereby appropriated out of any money in the State treasury not otherwise appropriated, the sum of $10,000, or so much thereof as may be necessary to pay all expenses incurred in effectuating the purposes of this act. For the payment of any expenses, the commission shall draw its warrants upon the state treasury, which warrants shall be signed by the chairman and at least one other member of said commission, and the state auditor shall then approve and the state treasurer shall pay such warrants if and when presented, but not exceeding in the aggregate the amount herein appropriated.

Approved 4-23-51.

INTRODUCTION

The Commission held its first organization meeting on the 9th day of July, 1951 in the Senate Workmen's Compensation Committee Room in the State Capitol, and thereafter held twelve meetings, mostly in the State Office Building in the "Hearing Room" of the State Industrial Commission. Many representatives of insurers, both Stock and Mutual Companies, representatives of Labor and representatives of employers' groups appeared before the Commission, all of whose testimony was recorded. These groups cooperated willingly with the Commission and gave it many helpful suggestions.

The Commission was also greatly aided by the suggestions and testimony of all members of the Industrial Commission of Minnesota and the Compensation Insurance Board, and particularly by Mr. Norbert Willwerscheid, Chief of the Division of Workmen's Compensation; also representatives of and the attorney for the Minnesota Compensation Rating Bureau, and representatives of the Minnesota Employer's Association, particularly, Mr. Otto F. Christenson, its Executive Vice-President.

The Commission also had the valuable services of Stefan A. Riesenfeld, Professor of Law of the University of Minnesota; author of *"Modern Social Legislation", and contributor to numerous periodicals on Workmen's Compensation Legislation, who volunteered his services without compensation, to aid the Commission in its work, and who is mainly responsible for the preparation of the Final Report herewith submitted. The Commission also employed Mr. Willard Converse, a senior law student in the University of Minnesota Law School, who did research work and helped in the preparation of this Report under the direction of Professor Riesenfeld. Also, at the suggestion of Professor Stefan A. Riesenfeld, the Commission employed the Minnesota Industrial Relations Center of the University of Minnesota which made a very complete and thorough study, analysis and report as to the effects of the economic and social consequences of total or severe partial permanent disability resulting from industrial accidents and occupational diseases compensable under the Workmen's Compensation Laws. A copy of this study and report under the heading of "THE EFFECTS OF SELECTED MINNESOTA WORKMEN'S COMPENSATION BENEFITS by Earl F. Cheit", Research Fellow of the Industrial Relations Center of the University of Minnesota, is on file with the State Law Library.

*Published by The Foundation Press, Inc., Brooklyn, N. Y., 1950.

The Commission appreciates the use of the "Hearing Room" and its equipment granted to it by the State Industrial Commission.

RECOMMENDATIONS

The Minnesota legislature by Minn. Sess. Laws 1951 created a commission to revise and codify the laws of this state relating to workmen's compensation. It was made the duty of said commission to examine the existing laws of this state relating to workmen's compensation and to prepare, propose and recommend such revision and codification as shall in its opinion simplify, harmonize and complete the same and be the most effective and suitable toward effectuating the ends sought to be gained by such laws.

Pursuant to this mandate the commission held public hearings dealing with the question of compensation insurance rates, coverage, benefit levels and formulae and other questions pertaining to the operation and administration of workmen's compensation in this state. The commission invited representatives of labor, of the employers, of the insurance industry and members of the industrial commission and the compensation insurance board to make recommendations for the improvement of and criticism relating to the operation and administration of the existing laws relating to workmen's compensation. Transcripts of the public hearings were taken. The following report takes account of the various suggestions made.

The commission decided in the course of its deliberations to contract with the University of Minnesota to make a study for the discovery and analysis of the effects of the economic and social consequences of total and severe partial disability resulting from industrial accidents and occupational diseases compensable under Workmen's Compensation Laws. The findings are appended to and incorporated into this report.

The commission decided to divide its work into four major phases. Accordingly this report is divided into four parts dealing with the following topics:

I. Workmen's Compensation Insurance Rates.

II. Rehabilitation of the injured worker.

III. Benefit Levels and Structures.

IV. Other technical improvements.

I.

WORKMEN'S COMPENSATION INSURANCE RATES.

1.

Reasons for the Interim Commission's Study

The Minnesota Workmen's Compensation Law provides for compulsory coverage of all private employment,[1] except a few categories.[2] The law imposes also a duty on private employers to insure their liability under the law with a private insurance carrier except where self-insurance is specially authorized by the industrial commission.[3] As a result the question of the workmen's compensation insurance rates is of extreme practical importance, which becomes evident if it is realized that the annual premiums for workmen's compensation insurance collected from Minnesota employers for the year 1951 amounted to $14,429,379.[4]

The insurance buyers in this state have made persistent complaints that the compensation insurance rates are excessive and result in unwarranted profits for the insurance companies. The rates for the year 1951 have been the object of a controversy which has been brought both before the District Court of Ramsey County and the Supreme Court.[5] Since the costs of workmen's compensation insurance is a factor in the determination of the state benefit level which must remain economically feasible in view of the competitive position of Minnesota industry, the Interim Commission has spent a considerable proportion of its time with a study of the costs of workmen's compensation, especially the rate question. The Commission has felt that such study would not duplicate the work of the courts which are bound by the existing law but would help to clarify the question of necessary amendments to the existing statutes relating to the compensation insurance rates.

---

[1]Minn Stat. § 176.02 (1949).

[2]Minn. Stat. § 176.05 (1949).

[3]Minn. Stat. §§ 176.03, 176.24 (1949).

[4]Minnesota Workmen's Compensation Insurance Expense Exhibit for calendar year 1951, as compiled by the Compensation Insurance Board.

[5]State of Minnesota, ex. rel. Minnesota Employers' Association, Associated General Contractors and McCree & Company v. Farricy, Harris & Dahl and Minnesota Compensation Rating Bureau.

The existing laws relation to the Supervision of compensation insurance rates

Fairly early in the history of workmen's compensation insurance it became evident that, by reason of its compulsory nature and its social importance to the employee, it was to be subjected to state control both as to the permissible policy provisions and as to its costs. As a consequence of this necessity the Minnesota legislature passed in 1921 an act to provide for the regulation of workmen's compensation insurance rates and a rate making bureau, and to create a Workmen's Compensation Insurance Board for the supervision and regulation of such rates and of such bureau. (Minn. Sess. Laws 1921 c. 85).

This act, which is now incorporated in c. 79 of the Minnesota Statutes 1949, created (a) the Minnesota Compensation Insurance Board, composed of the Commissioner of Insurance, one member of the Industrial Commission and a member appointed by the Governor[1] and (b) the Minnesota Compensation Insurance Bureau, composed of every insurer transacting the business of workmen's compensation insurance in this state.[2]

One of the chief functions conferred by statute upon the Board is the approval of the workmen's compensation insurance rates for each classification under which such business is written and the systems of merit and experience rating by which the standard rates may be adjusted to the experience record of the individual enterprise (insurance buyer).[3] No rates except those resulting from the approved standard rate and its adjustment to the individual risk under one of the approved merit or experience rating systems may be charged in Minnesota.[4]

The Bureau is a quasi-public agency which performs a number of important technical functions, among them the administration of the rates approved by the Board and the preparation and submission of the proposals of the industry for rate revisions.[5]

[1]Minn. Stat. § 79.02 (1949).
[2]Minn. Stat. § 79.11 (1949).
[3]Minn. Stat. § 79.07 (1949).
[4]Minn. Stat. § 79.21 (1940).
[5]Minn. Stat. § 79.11 (1949).

The statute contains a number of provisions relating to the internal organization and the powers of the Board. Under present law the Board has in particular the power to employ such persons as may be necessary for the proper discharge of its duties[6] and to make all needful rules for the orderly performance of its duties.[7]

The statute contains relatively few provisions relating to the rate making procedure. Its chief operating section prescribes that the board shall approve "a minimum and adequate and reasonable rate for each classification"[8] and that it "shall, in approving these rates, make use of the experience which from time to time may be available and of such helpful information as may be obtainable."[9]

The statute is silent as to whether and to what extent the Board must make its orders approving or disapproving rate changes on the basis of findings of fact. The statute is also silent as to the method and scope of judicial review. It seems, however, that judicial review can be had by means of the writ of certiorari issuing either out of the District Court[10] or, under special circumstances, directly out of the Supreme Court.[11]

In view of the recent difficulties it seems desirable to clarify the situation and

(a) prescribe the necessity of making findings supporting the order;

(b) provide for judicial review by means of the writ of certiorari directly issuing from the Supreme Court.

In view of the limited scope of review available on certiorari and the importance of speedy, final determination the intermediate stage of review by the District Court of Ramsey County seems to be a waste of time and effort.

[6]Minn. Stat. § 79.04 (1949).
[7]*Ibid.*
[8]Minn. Stat. § 79.07 (1949).
[9]*Ibid.*
[10]Minn. Stat. § 484.03, 606.01 (1948).
[11]Minn. Stat. § 480.04, 606.01 (1949).

3.

General Features of Compensation Insurance Rate Making

(a) Development of standard rate making techniques.

Actually the statute contains only a very general definition of the rates to be in force by providing that the Board shall approve

> "a minimum and adequate and reasonable rate for each[1] classification under which the business is written".

Consequently the methods of formulae by which the *Board* arrives at the desired result are to a large degree left to its technical judgment.

In reality, however, in all states permitting compensation insurance with private carriers, compensation insurance rate making techniques are to a certain degree standardized and the product of a long period of experience and trial and error.[2]

The insurance industry itself had voluntarily engaged in rate-making before it became a legal necessity. When many states provided for official control of compensation insurance rates the National Association of Insurance Commissioners suggested to the insurance companies the creation of an all industry organization to provide for the actuarial, statistical and other technical services necessary to compile, sift and evaluate the experience data upon which the rates and rate-revisions are based and to study flaws and possible improvements of the process in cooperation with the National Association of Insurance Commissioners.[3] This all industry organization is the National

[1]Minn. Stat. § 79.07 (1949).

[2]The rate-making process has been described in a number of the biennial reports of the Compensation Insurance Board, see especially Third Biennial Bulletin p. 2; Seventh Biennial Bulletin, p. 3; Eighth Biennial Bulletin, p. 2; Ninth Biennial Bulletin, p. 7; Thirteenth Biennial Report, p. 8; Fourteenth Biennial Report, p. 8.

[3]For the origins and purposes of the National Council On Compensation Insurance see the address of Jesse S. Phillips at the 53rd Annual Session of the National Convention of Insurance Commissioners, printed in Proceedings of the 53rd Ann. Sess. of N.A.I.C. 131 (1942).

Council on Workmen's Compensation. It is composed of private insurance carriers of all types, whether stock, mutuals, reciprocal, Lloyds organizations, or competitive state funds.[4] The Minnesota Compensation Insurance Bureau is affiliated with it and relies heavily on its services.

Without going into all technical and statistical details of the rate making process a few salient features must be clearly understood.

The various occupations in industry in the United States and Minnesota are divided into classifications, designated by code number, and listed in the so-called *Manuals* for each state. There are 660 such classifications recognized in the Minnesota Manual.[5] The rates are set for each classification and designated as Manual Classification Gross Rates (Standard Rates).

These rates are now ordinarily revised once a year, usually in the last calendar quarter, to go into effect on all new and renewal policies written after the beginning of the calendar year following the order. Under special circumstances revisions at other dates are made and ordered to go into effect with respect to current policies.

Since ordinarily all classifications are already under current rates the rate revisions do not revise the rates for all classifications individually but revise only (a) the general state rate level and (b) the so-called classification relativity of selected classification.[6] An increase or decrease of the state rate level increases or decreases, of course, all classifications gross rates which are not subject to a special revision by that identical factor. The study of the Interim Commission deals only with the effect of the technique pertaining to the revision *of the state rate level as a whole.*

[4]According to the annual report of March 6, 1952 the National Council on Compensation Insurance has 202 members, of whom 142 are organized as stock companies, 40 as mutuals, 7 as reciprocals, 6 as state funds, and the remaining one as Lloyds.

[5]Minnesota Compensation Insurance Board, 14th Biennial Report, p. 9.

[6]For further explanation of these steps see Minnesota Compensation Insurance Board, 7th Biennial Bulletin, p. 3.

(b) Functions and components of the rates.

Rates to be adequate must provide (a) for the sums required to pay benefits and (b) for the sums required to pay the expenses connected with the underwriting business. For rate making purposes each rate is therefore divided into two components: (1) The pure premium which is designed to cover the expected benefit payments, called "losses" and (a) the expense loading portion to cover the legitimate cost of the underwriting business.[7]

The determination of the correct pure premium portion of the rate to cover the expected losses has from the beginning been the object of careful study and detailed statistical analysis. The expense loading factor on the other hand has been for a long period the result of rather generalized assumptions and set automatically as a fixed portion of the standard premium dollar. Thus out of each premium dollar resulting from the standard gross rate a fixed percentage is designed to go for the expected losses (so-called *permissible loss ratio)* while the remaining percentage is designed to cover the legitimate expenses.

It must be realized that the premium base, *i. e.* the basis upon which the premiums are computed, is the total payroll and that the standard rates for all except very few classifications are expressed with reference to units of $100 payroll. Actually, however, the industry does not always collect the standard rate, but an amount different therefrom. This is due to the effect of the various approved merit and experience rating plans. Thus the actual net earned premiums collected by the industry from the Minnesota employers are usually less than would result from the premiums at standard rates.

The standard procedure in the annual revision of the state rate level thus consists actually only in an adjustment of the pure premium side of the state rate level. The accepted loading factor is then figured into the resulting rates.

In view of the accepted two components of the rates it is clear that excessive profits from the rating process may result either from the fact that that portion of the

[7] *Ibid.*

losses actually exceeds the incurred losses or because the expense loading factor produced a higher income than the industry as a whole should legitimately receive. Attacks[8] against the existing rates are therefore based on two main grounds: (1) That the pure premium portions of the rates are excessive and (2) that the loading factor is excessive.

(c) Inherent difficulties in rate determination.

In order to evaluate fairly the results produced by the standard rate making techniques it is perhaps worthwhile to realize some of the inherent difficulties, both with respect to the pure premium side of the rate and with respect to the loading factor.

Rate-making requires the forecasting of *future results* on the basis of past experience. Specifically with respect to compensation insurance rate-making it requires a forecasting of the various factors which will result in the actual loss ration, *i. e.* the fraction which is formed by dividing the sum of the incurred losses by the total of the net earned premium.

The forecasting of the future net earned premium will depend chiefly on correctly estimating the future premium base, *i. e.* the total payroll in the covered employments. The forecasting of the incurred losses will depend on a number of factors, viz. trends in accident frequency and severity,[9] in medical costs and, again, wage trends, but in this connection because of the statutory ceilings on the benefit payments only insofar as they reflect themselves in benefit payments. It can easily be seen that the development of a scientific procedure which can achieve this goal with statistical accuracy is humanly impossible.

[8] See Transcript of Hearings, Nov. 19, 1951, at p. 14-17.

[9] Accident frequency denotes the number of disabling accidents, while accident severity denotes the losses produced by such accidents. For comparison purposes the concepts of "injury frequency rate" and "injury severity rate" have been developed. The former is the average number of disabling work injuries for each million employee hours worked. The latter is the average number of days lost due to disabling work injuries for each thousand employee hours worked. The computation of days lost includes the use of standard time charges for fatalities and permanent disabilities given in the "Method of Compiling Industrial Injury Rates," approved by the American Standards Association in 1945. See Work Injuries in the United States during 1949, U. S. Dept. of Labor, Bureau of Labor Statistics Bull. No. 1025 (1951) p. 1 notes 2 and 3.

The determination of the amounts necessary for legitimate expenses presents likewise great problems. However, the difficulties here consist more in questions of social policy rather than economic predictability. The main questions result from the fact that, with a few exceptions, the carriers writing compensation insurance fall into two great classes, each of which in Minnesota write approximately half of the total premium volume. One of these classes consists of the stock companies in which all or a portion of the underwriting profit is distributed among stockholders, while the other class consists of the mutuals in which the policy holders are the members entitled to the ultimate underwriting profit. The method of doing business of the two classes differs considerably. The stock companies operate mainly with the help of commission agents while the business of the mutual takes largely the form of direct writing. As a result the average operating costs of the mutuals consistently are nearly 1/3 less than that of the stock companies.

As a result the question arises whether and how this difference should affect the setting of the loading factor. Since the statute permits only one rate for each classification it seems to follow that the Board cannot approve different loading factors for various carrier types. At any rate the Board early in its history took the position that it would adopt a uniform loading factor applicable to all carriers and that it should be based on the expense indications of the non-participating carriers.[10] In arriving at this result the Board considered that the participating carriers by their nature would redistribute the surplus to the policyholders as dividends and that any other method would be unfair to the stock companies especially in view of the fact that they underwrite the smaller risks. This practice, which is followed in the other states, has been constantly adhered to, although the magnitude of the loading factor has undergone certain variations in the course of time.

Even if it be accepted that the expense indications of the stock carriers constitute the main factor governing the size of the loading factor a number of other questions remain to be answered. The principal two of them concern (1) the necessity of the inclusion of a special factor for profits and (2) the advisability of a graduation of the load-

[10]Minnesota Compensation Insurance Board, Second Biennial Report, p. 10.

ing by size of risk, in view of the fact that proportionate expenses increase sharply with the decrease in size of risk. A more detailed discussion of these two problems will be made subsequently.

(d) The problem of the proper experience base.

The proper experience base for rate-making is one of the most pivotal and one of the most technical problems of the rate-making process. In Minnesota the present base is the *modified* experience of the last two policy years.

Since the ordinary compensation insurance policy covers all compensable cases occurring during the year following the effective date of the policy and since new policies may be written at any time during the calendar year following the rate revision, experience is calculated by *policy years, i. e.* under all policies written during the calendar year. Consequently the experience of the policy year 1950 comprises accidents which may occur late in 1951 under new policies written late in 1950.

This method has the effect that there is a considerable lag between the policy year experience used as the statistical base and the date at which the new rate goes into effect. Thus for the 1952 rates the policy year experience used was that of the policy years Nov. 1st, 1947—Oct. 31st, 1949.[11] This base, of course, produces a lag of nearly two years.

In order to take care of intervening changes in rates and benefit levels the "raw" experience of these policy years is modified and brought up to current premium level and the current benefit (law) level. However, it can be easily seen that this system has no specific correction factor for intervening *pay-roll* developments or *accident frequency* and *severity trends*. As a result the lag between the experience base and the date at which the new rate goes into effect has produced serious deviations from the "expected" loss-ratio, *i. e.* the ratio between incurred losses and net earned premiums, especially during and in the period following the second world war. To minimize this defect the National Council and the National association of Insurance Commissioners devised a new Rate Level Adjustment Factor which was to be inserted in the standard rate-making process beginning with the 1948 revision of the

[11]See Proposal by Minnesota Compensation Rating Bureau for the 1951 rate revision, dated Oct. 5, 1951.

rates for 1949.[12] Minnesota followed this recommendation promptly.[13] This state rate level adjustment factor which was modified by a Council proposal in 1950[14] is designed to close the gap between the utilized policy year experience and the effective date of the new rate and "to give over-all recognition, state by state, to the aggregate effect of factors which produce underwriting results either better or worse than those reflected by the policy year date available for rate making purposes." This factor, as modified, utilizes at present the loss ratio of the latest available calendar year (on the basis of the earned standard premiums adjusted for rate level changes with losses adjusted to the current law level) and derives therefrom, in a somewhat arbitrary manner,[15] a correction to be applied to the rate level change indicated by the selected policy year experience alone. *Since the data for the last calendar year is by nature not definite the whole procedure has the earmarks of an experimental device, which apparently has led to an improvement of the situation.*

Since the proof of the pudding is in the eating it is perhaps best now—on the basis of these preliminary explanations—to look at the actual results of the rate-making process in Minnesota.

4.
Actual Results of the Rate Making Process in Minnesota

(a) General features of the development in the Minnesota compensation insurance experience.

The question of the cost of workmen's compensation insurance in the state, its development and the impact of the rating process thereon can be best understood by tabulating the essential data.

In order not to overload the tables and to keep the matter within the bounds of significant information the post-depression era has been chosen as the starting date.

Because of the difference between policy year experience and calendar year experience both experiences have been taken into account. It must be realized that it is not always easy to correlate the two sets of data and great care has been taken not to confuse them.

All data are taken either from the information contained in the annual reports filed by the compensation carriers with the Insurance Commissioner (containing data relating to calendar year experience) or from the information furnished to the Compensation Insurance Board and compiled by that body.

Table 1 presents the Minnesota Compensation Insurance Experience by policy year, commencing with Jan. 1st, 1935 and ending with Oct. 31, 1949, i.e. giving the experience relative to all policies written between these two dates.

The table lists in separate columns the total payroll exposure, the total earned premium, the total incurred losses, their break-down into indemnity losses and medical losses, the resulting actual loss ratio *(i. e.* total losses divided by total earned premium) and finally the rate level changes. In relation to the last column, however, it must be noted, that it is not completely correlated to the previous data: (a) The rate level changes listed take effect on Jan. 1st each year for all new and renewal policies written after that date, while the policy year for experience purposes since 1946 commences on Nov. 1st. (b) The rate level changes omit intermediate changes based on law amendments and indicate only composite changes on a year to year basis.

TABLE 1
MINNESOTA WORKMEN'S COMPENSATION EXPERIENCE
By Policy Year
All Companies

(1) Policy Year*	(2) Total Payroll Exposure	(3) Total Earned Premium	(4) Total Incurred Losses	(5) Total Incurred Indemnity	(6) Total Incurred Medical	(7) Loss Ratio	(8) Rate Level** Change
1935	340,401,102	5,957,389	2,648,426	1,627,680	1,020,746	44.46	1.000
1936	387,601,151	7,015,941	2,847,129	1,764,508	1,082,621	40.58	.989
1937	415,875,728	6,966,860	2,931,145	1,838,650	1,092,495	42.07	.917
1938	418,442,355	5,816,205	2,651,205	1,608,790	1,042,613	45.59	.846
1939	450,428,590	6,136,130	3,054,054	1,851,654	1,202,400	49.77	.936
1940	493,634,183	6,337,476	3,318,570	1,996,739	1,321,831	52.36	.945
1941	562,296,251	7,078,269	3,717,445	2,273,037	1,444,408	52.51	.935
1942	650,841,421	7,916,774	4,096,456	2,565,985	1,530,471	51.74	.955
1943	737,452,998	8,666,164	4,627,162	2,804,845	1,822,317	53.39	.982
1944	800,538,348	9,162,618	4,589,463	2,863,223	1,726,240	50.08	.986
1945	893,359,614	10,276,723	5,272,996	3,369,112	1,903,884	51.31	.961
1946	929,185,322	11,087,189	5,289,183	3,295,371	1,993,812	47.70	.980
1947	1,276,627,049	14,453,839	7,097,184	4,286,485	2,810,699	49.10	.942
1948	1,404,518,134	14,601,821	7,966,274	4,935,590	3,030,684	54.55	.977
1949	1,419,152,847	13,817,446	8,261,203	5,092,236	3,168,967	59.78	.908
15 Year Total	11,180,355,093	135,290,844	68,368,093	42,173,905	26,194,188	50.53	.462

*Policy year 1946 is for 10 months only. Policy years 1947, 1948 and 1949 begin on Nov. 1st and end on Oct. 31st.
**Each change is relative to the rate in effect the previous Jan. 1st.

[12] See Proceedings of the National Association of Insurance Commissioners, 79th Sess. 436 (1948).
[13] See Minn. Compensation Insurance Board, 13th Biennial Report, p. 15.
[14] Proceedings of the National Association of Insurance Commissioners, 61st Sess. 536 (1950).
[15] *Ibid.*

From this table it can be seen that between the policy years 1935 and 1949 the premium base, the earned premium, the total losses and their components per policy year increased between three and four times, while the rate level decreased to less than 50%.

In order to better visualize these changes the following table (No. 2) indicates the respective changes taking the values for 1935 as unity.

TABLE 2

(1) Policy Year	(2) Change in Total Payroll Exposure	(3) Change in Total Earned Premium	(4) Change in Total Losses	(5) Change in Indemnity Losses	(6) Change in Medical Losses	(7) Change in Rate Level
1935	1.000	1.000	1.000	1.000	1.000	1.000
1936	1.139	1.178	1.075	1.084	1.061	.989
1937	1.222	1.169	1.106	1.130	1.070	.907
1938	1.229	.976	1.001	.988	1.021	.767
1939	1.323	1.030	1.153	1.138	1.178	.718
1940	1.450	1.064	1.253	1.227	1.295	.679
1941	1.652	1.188	1.404	1.396	1.415	.635
1942	1.912	1.329	1.547	1.576	1.499	.606
1943	2.166	1.455	1.747	1.723	1.785	.595
1944	2.352	1.538	1.733	1.795	1.691	.587
1945	2.624	1.725	1.991	2.070	1.865	.564
1946	2.730	1.861	1.997	2.025	1.953	.553
1947	3.750	2.426	2.680	2.633	2.753	.521
1948	4.126	2.451	3.008	3.032	2.969	.509
1949	4.169	2.319	3.119	3.128	3.104	.462

Rounding out the figures this table shows that while the payrolls increased during the fourteen year period by a factor of 4.17, the losses increased only by a factor of 3.12 and the premiums by a factor of 2.32 as a result of the rate reductions.

The fact that the losses increased less sharply than the payrolls for compensable employments can be explained by either or both of two chief factors: (a) that the safety programs—stimulated to a large extent by the compensation laws—have reduced the accident frequency and severity rates by that degree and (b) that the benefit ceilings have kept the losses from rising at equal pace with the wages. This question will be investigated in another part of this report.

The fact that the reduction of the rate level by a factor of .462 coupled with a premium base increase by a factor of 4.17 produced an increase of the earned premium by 2.32 and not by 1.93 (=4.17 by .462) shows that the decrease in rate level does not reduce the average rate *(i. e.* total earned premium by 100 divided by the payroll exposure) by the same amount.

The following table shows the average premium rate, the changes relative to 1935 and the approximate corresponding rate level changes.

TABLE 3

(1) Policy Year	(2) Average Premium Rate[1]	(3) Change in Average Premium Rate Level to 1935	(4) Change in Rate Level Relative to 1935
1935	$1.75	1.000	1.000
1936	1.81	1.034	.989
1937	1.68	.960	.907
1938	1.39	.794	.767
1939	1.36	.777	.718
1940	1.28	.731	.679
1941	1.26	.720	.635
1942	1.22	.697	.606
1943	1.18	.674	.595
1944	1.14	.651	.587
1945	1.15	.657	.564
1946	1.19	.680	.553
1947	1.13	.646	.521
1948	1.04	.594	.509
1949	.97	.554	.462

The explanation for the differences in the rate change of the average premium rate and of the rate level is the fact that the rate level applies only to a change in the standard rate and not in the actual rates and that the latter reflect the effects of the various experience rating programs. It also means, however, that the rate level reductions have not been accompanied by a completely proportionate reduction of the actual average premium rate.

(b) The amount of excess pure premiums recovered.

From 1935 until 1950 the underwriting experience in Minnesota was favorable to the carriers. The calendar year experience for 1951 was the first since the depression which produced a substantial loss to the carriers. This result remains true in view of the fact that the new rate for 1951 which the Board set as the result of the Supreme Court's vacating the previous rate order remains the same.

The following tables show the amount of excess income from the pure premium portion of the rates on a policy year base, so far as available on June 1, 1952.

Table 4, showing excess premiums recovered during the policy years 1935-1949 indicated that during this period the portion of total earned premiums used for benefit payments varied between 40.58 and 59.78 and never reached the permissible loss ratio which during the total period in question was fixed at 61.0. The result was a considerable

[1]Earned premium by 100 over Payroll Exposure

amount of excess *income* to the carriers. The following table indicates the actual loss ratios and the excess pure premiums received and the percentage of such excess charges on the policy year basis.

TABLE 4

Excess Pure Premium (policy year)

(1) Policy Year	(2) Total Premium Earned	(3) Actual Loss Ratio	(4) Excess Premium (.61—(3)x(2)	(5) Per Cent of Overcharge*
1935	5,959,389	44.46	985,581	27.12
1936	7,015,941	40.58	1,432,595	33.47
1937	6,966,860	42.07	1,318,638	31.02
1938	5,816,205	45.59	896,482	25.26
1939	6,136,130	49.77	688,985	18.40
1940	6,337,476	52.36	547,290	14.15
1941	7,078,269	52.51	600,299	13.90
1942	7,916,774	51.74	732,776	15.17
1943	8,666,164	53.39	659,198	12.46
1944	9,162,618	50.08	999,733	17.88
1945	10,276,723	51.31	995,805	15.89
1946	11,087,189	47.70	1,474,002	21.80
1947	14,453,839	49.10	1,719,658	19.50
1948	14,601,821	54.55	940,836	10.56
1949	13,817,446	59.78	167,439	1.99
Total	135,290,844	50.53	14,159,317	17.16

*(4) / (2) x .61 = 5

Because the final disposition of this excess premium income can be ascertained only on a calendar year basis an analogous table (5) has been compiled indicating the results of the rating process on the calendar year basis. This table is then brought up to date by incorporating also the experience for calendar year 1951.

TABLE 5

Excess Pure Premium (calendar year)

(1) Calendar Year	(2) Total Premium Earned	(3) Actual Loss Ratio	(4) Excess Premium (.61—(3)x(2)	(5) Per Cent of Overcharge*
1935	4,993,998	56.94	202,756	6.65
1936	6,321,282	46.50	916,585	23.77
1937	7,413,376	42.99	1,335,149	29.52
1938	6,565,956	44.97	1,052,522	26.28
1939	6,112,396	51.81	561,81	15.07
1940	6,048,757	50.08	607,087	16.45
1941	6,437,218	54.50	418,419	10.66
1942	7,443,042	52.71	691,458	15.23
1943	8,462,232	54.20	575,431	11.15
1944	8,788,304	53.97	617,817	11.51
1945	9,308,119	54.64	591,996	10.43
1946	10,895,539	56.58	481,582	7.25
1947	13,948,867	50.47	1,458,285	17.14
1948	15,545,585	51.96	1,405,320	14.82
1949	14,939,067	54.52	968,051	10.62
1950	14,473,044	60.44	81,049	.92
Total	147,696,782	52.80	11,965,236	13.28

*(4) / (2) x .61

If the calendar year experience for 1951 is added which resulted in a loss to the carriers the following result is arrived at.

TABLE 5a

1951	14,429,379	72.40	2,005,683*	—23.76**
Total	162,126,161	54.54	9,959,553	10.11***

*(3)—.585 x (2)—(.585 being the permissible low ratio for that year.)
**(4) / (2) x .585
*** (4) / (147,696,782 x .61 + 14,429,379 x .585)

(c) The question of excess income from expense loading.

One of the most difficult problems relating to the rating process is the question of the proper allowance for operating expenses. Frequently the criticism has been made that the present methods of allowing for expenses results in unwarranted excess income to the carriers.

It has already been pointed out that the expenses of the carriers vary considerably according to their method of conducting the underwriting business. Carriers which do not to any sizable degree employ commission agents and insurance brokers but rely for the acquisition of their business mainly on a salaried staff operate at considerably lower cost than carriers which do engage in indirect writing. These differences in the underwriting methods coincide largely with the difference in corporate structure; the stock corporations operate to a much greater extent with the assistance of independent insurance agents than the mutuals.

The question has been debated many times of whether the rating process should allow different amounts of expense loading for different forms of carriers and the state officials in charge of the rate-making have commonly agreed that expense loadings should be *uniform* for all carrier types and be adequate to allow the *average* cost of the most expensive form of conducting the underwriting business, *i. e.* to cover the average operating cost of the non-participating or *stock* carriers.[1] In Minnesota the Compensation Insurance Board, on the advice of the At-

[1]See, for instance, the statement to that effect in the report of the National Council on Compensation Insurance to the special subcommittee of the Workmen's Compensation Committee of N.A.I.C., May 16, 1951: "It is a recognized procedure in workmen's compensation rate-making that basic expense loadings in the manual rates are predicated on the requirements of the stock companies." Proceedings of the National Association of Insurance Commissioners, 82d Sess. 395 (1951).

torney General, has concluded that the law vests it with authority to only approve a single set of rates and therefore only one expense loading factor for all carriers.[2]

In the actual application of this principle, however, the different states have adopted expense loading factors of varying amounts, and even within the same state the practice has undergone variations in the course of time. In Minnesota the expense portion of the standard rates has remained fixed at 39% from the policy year 1933 until the rate revision in 1950. In that year the Board inserted into the 1951 standard rates an additional loading for profits and contingencies of 2.5%, making a total of 41.5% loading for expenses plus profits and contingencies.[3] In doing so the Board followed a proposal by the Bureau which was based on the practice of 27 states but not formally approved by the National Association of Insurance Commissioners.[4]

This new profit and contingency factor is different from the Contingency Factor which was made part of the Minnesota rate-making process in the 1934 rate revision[5] and remained part thereof until 1943. That factor was *not* a profit loading.[6] It was an item in the rating process to prevent an accumulation of underwriting losses, taking as the starting year the calendar year 1933 in which the Minnesota compensation insurance business had produced an aggregate loss of $340,504.[7] The factor was not to exceed 5.0 and was to become unity as soon as that loss was amortized and the accumulated profit equaled 2.5% of the earned premium of the last calendar year. This latter contingency occurred in the 1937 rate revision[8] and since that time the contingency loading remained 0.00[9] until its formal elimination in 1943.[10] The contingency loading for the rates for 1935, 1936 and 1937 which amounted to 5.0

[2]Minn. Compensation Insurance Board, Fifth Biennial Bulletin, p. 6.
[3]Minn. Compensation Insurance Board, Fourteenth Biennial Report, p. 13.
[4]Proceedings of the National Association of Insurance Commissioners, 82d Sess. 416 (1951).
[5]Minn. Compensation Insurance Board, Sixth Biennial Bulletin, p. 5.
[6]Minn. Compensation Insurance Board, Eighth Biennial Bulletin, p. 8.
[7]Minn. Compensation Insurance Board, Seventh Biennial Bulletin, p. 7.
[8]Minn Compensation Insurance Board, Eighth Biennial Bulletin, p. 5, 8.
[9]Minn. Compensation Insurance Board, Ninth Biennial Bulletin, p. 12, 13.
[10]Proceedings of the National Association of Insurance Commissioners, 74th Sess. 148 (1943).

for each of the three years in question was contested in court, but upheld.[11]

To provide the rate-making authorities with a proper basis for the expense allowance the compensation insurance carriers are required to furnish information regarding their expenses. In Minnesota such statements have been filed with the Compensation Insurance Board since the establishment of that agency.[12] The pertinent data are now contained in the Minnesota Casualty Experience Exhibits which the compensation insurance carriers must file annually with the Board on a special form prescribed by that agency for that purpose. The information contained in these exhibits is supplemented and to a degree duplicated in the *Annual Statements* which the insurance carriers are obligated to file each year with the Insurance Commissioner.

The Minnesota Casualty Experience Exhibits conform with the standardized blank of casualty experience exhibits which were developed by the National Association of Insurance Commissioners in 1944 and 1945.[13] They contain, among other information, data relating to the expenses of the carriers, broken down into expense groups (loss adjustment, acquisition and field supervision, general expenses and tax, licenses and fees) and allocated to the various lines. All expense data are given on a nationwide basis.

In accord with the view taken by the rating authorities in general, the Minnesota Compensation Insurance Board from the beginning of its work took the view that attempts by other states "to analyze expense applicable to a particular line of insurance in their particular state" have "proven unsatisfactory and unreliable" and produced indications which were "neither definite nor dependable."[14] It has later reiterated from time to time that "it has always been considered impossible in a multiple line casualty company to accurately allocate expenses by states as well as by type of insurance."[15]

The state, following the resolution by the National Association of Insurance Commissioners, has issued detailed "Instructions for the Preparation of the Casualty Insur-

[11]Minnesota Compensation Insurance Board, Ninth Biennial Bulletin, p. 17ff., Tenth Biennial Bulletin, p. 14ff.
[12]Minn. Compensation Insurance Board, First Biennial Bulletin, p. 12.
[13]Proceedings of the National Association of Insurance Commissioners. 75th Sess. 244ff. (1944); 76th Sess. 111ff., 175ff. (1945).
[14]Minn. Compensation Insurance Board, Second Biennial Bulletin, p. 9.
[15]Minn. Compensation Insurance Board, Eighth Biennial Bulletin, p. 10.

ance Expense Exhibit"[16] which insure uniform practices of the carriers writing compensation insurance in the state and permit more convenient auditing of their accuracy.

The following table, taken from the various reports of the Minnesota Compensation Insurance Board shows the development of the expense ratios of the various types of carriers writing compensation insurance in the state, as allocated to compensation insurance on a countrywide and annual basis.

TABLE 6

Expense Ratio

(1) Calendar Year	(2) All Carriers	(3) Participating Carriers	(4) Non-Stock Carriers	(5) Non-participating Carriers	(6) Stock Carriers
1935	36.27	22.66		42.55	
1936	34.35	21.99		40.87	
1937	33.74	21.83		40.50	
1938	35.63	23.53		42.26	
1939	36.23	24.30		42.89	
1940	36.20	23.77		43.26	
1941	34.57	24.06		42.01	
1942	32.64	24.06		38.94	
1943	31.73	23.85		37.15	
1944	30.76	22.59		36.18	
1945	32.16	24.56		37.10	
1946	33.77		22.85		39.27
1947	32.25		22.48		37.42
1948	32.48		23.14		37.53
1949	32.41		23.65		37.66
1950	33.62		24.48		39.42
Total*	33.18		23.47		38.97

*This total is weighted to the dollar volume of business by multiplying for each of the above years the expense ratio times the earned premium for that year, and then totalling the result and dividing by the total earned premium.

For the calendar year 1951 the carriers were called upon to report the "true" Minnesota experience. In answer to this call the following experience was reported:

TABLE 6a

(1)	(2)	(4)	(6)
1951	32.0	24.9	38.2
Total	33.7	*	*

*The Minnesota earned premium volume for stock and non-stock carriers is not available for the years prior to 1952.

(d) Summary: evaluation of the magnitude of and the reasons for the excess income.

Tables 5 and 5a indicate that the total excess income of the insurance industry from the pure premium portion of the compensation insurance premiums amounted for the calendar years 1935-1951 to an aggregate of $9,959,553 or a 10.11% overcharge. It must, however, be noted that the amount of the annual excess income of this type had

[16]Proceedings of the National Association of Insurance Commissioners, 75th Sess. 255 (1944).

dropped sharply for the calendar year 1950 and changed into a substantial deficit in 1951.

Table 6 and 6a relating to excess income from the expense portion of the net earned premium are somewhat more difficult to interpret and evaluate. Since the expense leading is predicated on the average cost of the most expensive type of carrier operation it is clear that the total result must end up in an apparent excess income from the expense loading portion. Since the actual expense ratio of the industry for the aggregate business between 1935 and 1950 was only 33.18 instead of the theoretical 39.0 (41.5 for 1951) an apparent aggregate excess income for the indicated period would run to $8,595,953. However, if the expense ratio of only the non-participating or stock carriers[17] are taken in account the aggregate expense ratio was 38.97 or very nearly the allowed 39.0. In other words the excess income from the expense portion of the premium dollar would amount to only $44,309.00.

As a result it cannot be said that the expense loading of 39.0 (or 41.5) resulted in a true excess income. The true excess income thus resulted for practical purposes completely from the pure premium portion, and was thus principally due to the failure of the rating process to promptly respond to recent wage, cost and accident trends.

The mentioned sharp drop of excess premium income for the year 1950 is at least partly explainable by the facts (a) that the rates for 1949 and thereafter were calculated by insertion into the rating mechanics of the new state rate level adjustment factor[18] and (b) that the changes in the labor force and production predicated by the switch to a defense economy resulted in an upsurge of the accident frequency rates.[19] The deficit in 1951, which was a nation wide phenomenon,[20] is apparently at least partly explainable by the fact that the steady increase in the premium base, *i. e.*, the payrolls, was somewhat slowed down by the wage stabilization program while medical costs continued to rise and that the state rate level adjustment factor still is not sufficiently responsive to recent trends in the major factors determining the loss ratio.

[17]As Table 6 indicates the Compensation Insurance Board changed its system of classification in 1946. Prior to that date it separated expense experience of the carriers according to whether or not the policy holders shared in the profits, after that it separated experience according to their organization. This shift affects of course the comparability of the data.

[18]See *supra* section 3, test to footnote 12.

[19]See 72 Monthly Labor Rev. 549 (May 1951).

[20]See Annual Report of the National Council on Compensation Insurance (March 6, 1952).

Because of the recent studies undertaken by the National Association of Insurance Commissioners for the improvement of the correction factors, this Commission feels that the results of the studies should be awaited in the hope for a national solution of the problem.

5.

The Disposition by the Industry of the Excess Premium Income.

The foregoing section has shown that the insurance industry during the period following the depression until the most recent calendar year has collected a substantial sum of excess premiums from the writing of workmen's compensation insurance in Minnesota.

This excess premium income was principally due to the fact that the sums derived from the *loss portion* of the premium dollar exceeded the sums paid out as benefits. Between 1935 and 1950 the industry collected nearly twelve million dollars surplus premium from the Minnesota employers, which amounted to 8.1% of the total premium collected during that period or a 13.28% overcharge (see table 5). The loss in 1951 reduced this amount to ten million dollars (see table 5a).

Another excess income was derived from the expense portion of the premium dollar. The excess income in that respect, however, was not due to an inherent shortcoming of the rating process but rather owing to the fact that the carriers employ two main types of underwriting practices and that the expense loading is designed to provide adequate premium income to cover the more expensive type of operation. As a result the carriers operating on the mutual principle are in the position to distribute dividends derived from the excess expense portion of the premium dollar.

The Minnesota Compensation Insurance Board from the beginning of its operations had taken the position that the participating carriers would return excess premium income in the form of dividends to the policyholders.[1] The organization of the mutuals makes this result, of course, in a certain sense mandatory. In addition, in the case of the mutuals excess income derived from the loss portion of the premiums will likewise be available for distribution

[1]Minnesota Compensation Insurance Board, Second Biennial Report p. 10.

to the policyholders. In that respect the errors in the rating process would economically not produce any ultimate loss to the insurance buyers in mutuals. The only remaining questions would be whether the multiple line mutuals would pay dividends to policy holders according to the results of the underwriting business *by line* and without discrimination in favor of special classes of policy holders.

The case of the stock carriers is more complex. Some of the stock carriers have refrained from distributing directly or indirectly all excess income from the underwriting business to their stockholders and developed so-called participating policies. Although there exists a serious question as to the legal propriety of judging the satisfactory operation of the existing rate making procedure by taking account of the final disposition by the industry of any excess income,[2] it is felt that an investigation of the total economic results would be helpful.

As a result a study was made of the amount of the excess premium income collected during the last six available calendar years by the carriers doing the major portion of the compensation insurance business in the state and of the disposition made thereof. Since, except for 1951, the actual expense of the Minnesota business is unascertainable, the figure was interpolated by multiplying the amount of net earned premium in Minnesota with the country-wide expense ratio of the particular carrier. For 1951 the figures reported as actual Minnesota expenses were taken. Tables showing the experience for 1946-1951 are included in the Appendix.

The results following from these tables are combined in Table 7 which shows how the disposition by the carriers writing most of the Minnesota compensation insurance disposed of their profits resulting from such business.

TABLE 7

5 Year Total Premium Income and Disposition (calendar years 1946-1950)

(1) Type of Carrier	(2) Net Earned Premium	(3) Incurred Losses	(4) Estimated Expenses	(5) Dividends to Policyholders	(6) Profits Retained
Non-participating Stock Carriers	22,263,696	13,393,907	8,673,589	.....	197,200
Participating Stock Carriers	9,463,833	4,773,269	2,984,542	1,088,827	617,196
All Stocks	31,728,529	18,167,175	11,658,131	1,088,827	814,396
Mutual Carriers	30,957,849	17,028,297	8,048,182	5,646,787	234,563
Total	62,686,378	35,195,472	19,706,313	6,735,614	1,048,959

[2]See the argument made by the employers in Appellant's Brief in State of Minnesota, ex rel. Minnesota Employer's Ass'n. *et al.* v. Farricy, Harris and Dahl *et al.* p. 32.

Table 7 shows that the mutual companies returned all but approximately 1% of their net earned premiums to the policyholders. The retained sum presumably went into reserve funds, etc. The stock companies distributed approximately 3.4% as dividends to the policyholders and retained 2.6% of the total net earned premium as profits. Thus the aggregate retained profits from underwriting business for the years 1946-1950 amounted to $1,048,959 out of a total earned premium of $62,688,378 or 1.7%. Although the carriers have a substantial income from interest on premiums and investment[3] it can hardly be said that the retained profit of 1.7% is excessive. Even the figure of 2.6% which resulted for the stock carriers alone cannot be said to be alarming.

In the year 1951 in which the carriers suffered losses the results were as follows:

TABLE 7a

(calendar year 1951)

(1) Type of Carrier	(2) Net Earned Premium	(3) Incurred Losses	(4) Estimated Expenses	(5) Dividends to Policyholders	(6) Profits Retained
Non-participating Stock Carriers	5,158,651	3,937,141	1,990,931	.....	—769,421
Participating Stock Carriers	1,861,389	1,118,985	678,712	200,414	—136,712
All Stocks	7,020,040	5,056,126	2,669,643	200,414	—906,133
Mutual Carriers	6,350,055	4,574,108	1,520,533	887,445	—632,031
	13,370,095	9,650,234	4,190,176	1,087,859	—1,538,164

It must be recognized that excess profits flowing from the existing rating procedures for the years since 1935 until the most recent period were only avoided because the carriers redistributed voluntarily and without regulation a large portion of their excess income through dividends to the policyholders.

The right of policyholders to share in profits from underwriting varies widely among the companies and is not uniform. A number of carriers apply sliding scales depending on the size of the policy. There would appear to be danger of discrimination particularly against the smaller risks and thus legislative inquiry would be valuable and proper.[4]

[3]This income is in the neighborhood of 4.0%. See statement by the manager of the National Council on Compensation Insurance, Proceedings of the National Association of Insurance Commissioners, 82d Sess. 386 (1951).

[4]The Attorney General has ruled that the present law does not impose restrictions on participating plans relating to profit from underwriting business. See Minnesota Compensation Insurance Board, Ninth Biennial Bulletin, p. 34.

Undoubtedly the safest method to avoid excessive profits from errors in the rating process would be a retrospective adjustment of the state rate level which would permit only a reasonable margin of profit. Such a plan, however, would create substantial practical difficulties. It is, therefore, believed that it is both advisable and necessary to vest the Board with power to inquire into all participating plans and to advise the Legislature of any possible basis for legislation against discrimination.

Employers who would insure with carriers not operating on participating plans would do so at their own risk and for reasons of their own and would not need special legislative protection.

PROPOSED AMENDMENT

A bill for an act relating to Workmen's Compensation Insurance; amending Minnesota Statutes 1949, Sections 79.04, 79.07 and 79.10.

Be it Enacted by the Legislature of the State of Minnesota:

Section 1. Minnesota Statutes 1949, Section 79.04 is amended to read:

The board shall organize by electing one of its members chairman and another of its members secretary. The secretary shall keep full minutes of all hearings, transactions, and proceedings by or before the board. The board shall have power to make all needful rules for the orderly performance of its duties and to prescribe the procedure for the conduct of hearings and other proceedings before it. It shall have power to employ such persons, *including a full-time actuary or actuaries,* as may be necessary for the proper discharge of its duties.

Sec. 2. Minnesota Statutes 1949, Section 79.07 is amended to read:

To provide for the solvency of insurers writing workmen's compensation insurance in this state and to secure reasonable rates, the board shall approve a minimum, (AND) adequate, *fair* and reasonable rate for each classification under which such business is written. The board shall, in approving these rates, *make findings in support thereof and* make use of the experience which from time to time may be available and of such other helpful informa-

tion as may be obtainable. For the purpose of uniformity classification under which such business is written, the board shall, in approving these rates, *make findings in support thereof and* make use of the experience which from time to time may be available and of such other helpful information as may be obtained. For the purpose of uniformity and equality, the board shall after consultation with insurers approve a system of merit and experience rating for use in writing of such business in this state. No system of merit or experience rating except the one so approved shall be used in this state. *The board shall have the power to issue regulations to provide against using the size of risk as a basis for unfair discrimination.*

Sec. 3. Minnesota Statutes 1949, Section 79.10 is amended to read:

The board shall have power upon its own motion or upon the written complaint of any person having a direct interest to review the acts of any insurer, bureau, or agent subject to the provisions of section 79.01 to 79.23, and to make findings and orders requiring compliance with the provisions thereof. This review before the board shall be upon not less than ten days' notice to the parties interested and its findings or orders shall be made after a hearing before it and, in all cases shall be subject to (SUMMARY REVIEW BY THE DISTRICT COURT.) *a review by a writ of certiorari brought in the supreme court.* During the court review the operation of the board's orders shall be suspended, but in the event of final determination against an insurer any overcharge made during the pendency of the proceedings shall be refunded to the person entitled thereto. All written complaints under this section shall be verified and may be upon information and belief of the person complaining. A copy of the complaint shall be served upon the insurer, bureau, or person against whom the complaint is directed and each of these parties in interest shall be entitled to at least ten days' notice of any hearing thereon.

Supplement to Suggested Statutory Changes to

Part I.

The following is a supplement to the suggested statutory changes heretofore submitted and is given as a possible alternative to the suggested statute giving the board power to regulate participating policies.

Be it Enacted by the Legislature of the State of Minnesota:

Minnesota Statute, section 79.20 is amended to read as follows:

Subd. 1. (As the section now reads).

Subd. 2. Every insurer referred to in Subd. 1 who issues participating policies shall file with the board a true copy or summary as the board shall direct of its participating dividend rates to policy holders. The board shall study such rates and make recommendations to the legislature concerning possible bases for discrimination.

Such filing shall be made at the same time as the filing required under Subd. 1.

This statute is an alternative to the last sentence of the suggested Statutory change of 79.04, Section 2.

APPENDIX I
PREMIUM INCOME AND DISPOSITION
Calendar Year 1946

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 321,199	$ 210,120	$ 161,563	—	**$ –50,484
Am. Auto Ins. Co.	88,340	52,562	41,343	—	**–5,565
Am. Cas. Co.	60,680	13,039	26,772	8,121.90	12,748
Am. Motorist	37,449	30,878	9,564	–2,483.95	520
Anchor Cas.	830,583	306,746	252,663	102,781.03	168,393
Ass. Ind. Corp.	83,253	64,405	26,815	4,748.67	**–12,715
Bituminous Cas. Ins. Co.	409,347	259,847	137,008	24,155.53	**–11,663
Cent. Sur. & Ins. Co.	31,247	6,971	13,530	—	10,746
Employer's Liab. Assur.	109,330	86,859	44,279	—	**–21,808
Fid. & Cas. Co.	261,164	204,158	101,854	—	**–44,848
Gen. Acc. Fire & Life Assur.	63,449	43,778	26,014	—	**–6,343
Hdwe. Ind. Ins. Co. Minn.	122,657	72,487	39,961	22,123.63	**–11,914
Hartford Acc. & Ind. Co.	310,731	166,138	120,874	—	23,719
Ind. Ins. Co. of North Am.	108,975	50,405	54,596	—	3,974
Maryland Cas. Co.	213,343	45,518	79,150	—	88,675
New Amsterdam Cas. Co.	97,375	57,504	37,976	—	1,895
Royal Ind. Co.	930,072	55,397	327,385	—	547,290
St. P. Mercury Ind. Co.	293,077	169,366	110,783	—	12,928
Standard Acc. Ins. Co.	323,869	185,105	129,871	—	8,893
Travelers Ind. Co.	278,834	193,937	100,380	—	**–15,483
Travelers Ins. Co.	262,265	186,651	81,827	—	**–6,213
U. S. Fid. & Guaranty Co.	211,467	294,095	92,834	—	**–175,462
Western Cas. & Sur. Co.	69,076	16,451	22,381	—	30,244
Zurich Gen. Acc. & Liab.	57,480	22,100	22,532	—	12,848
TOTAL	$5,575,262	$2,794,517	$2,061,955	$ 159,457	$559,333
NON-STOCK COMPANIES					
Am. Mut. & Liab. Ins. Co.	$ 415,261	$ 243,401	$ 87,620	$ 63,172.84	$ 21,067
Auto Owners Ins. Co.	17,125	10,039	5,275	—	1,811
Employer's Mut. Cas. Co.	200,908	96,820	47,012	38,415.40	18,661
Emplyr's Mut. Wis. Liab. Co.	2,356,361	1,125,195	513,687	389,365.79	328,113
Federated Mut. Impl. & Hdwe.	—	—	—	—	—
Hdwe. Mut. Cas. Co.	570,521	363,145	175,720	108,052.64	**–76,397
Iowa Natl. Mut. Ins. Co.	305,284	157,676	99,828	52,881.18	**–5,101
Liberty Mut. Ins. Co.	667,326	324,467	137,469	128,976.00	76,414
Lumbermen's Mut. Cas. Co.	139,430	109,706	37,367	24,464.96	**–32,107
Mut. Crmry. Liab. Ins. Co.	164,452	130,858	28,450	41,141.01	**–35,997
Mut. Service Cas. Co.*	65,818	27,213	25,537	6,248.15	6,820
Security Mut. Cas. Co.	78,486	61,624	13,029	51,878.23	**–48,045
TOTAL	$4,980,972	$2,650,144	$1,170,994	$ 904,596	$255,238
GRAND TOTAL	$10,556,234	$5,444,661	$3,232,949	$1,064,053	$814,571

*Formerly Am. Farmers Mut. Auto Ins. Co.
**"–" means "Loss" rather than Profit.

APPENDIX II

PREMIUM INCOME AND DISPOSITION
Calendar Year 1947

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 345,178	$ 175,106	$ 144,284	$ —	$ 25,788
Am. Auto Ins. Co.	130,370	47,642	54,104	—	28,624
Am. Cas. Co.	93,397	34,954	41,095	7,555.60	9,792
Am. Motorist	47,151	10,291	10,562	6,361.64	19,936
Anchor Cas.	1,000,388	526,247	292,113	123,988.31	58,040
Ass. Ind. Corp.	271,819	120,675	61,159	10,410.84	79,574
Bituminous Cas. Ins. Co.	442,274	167,539	122,068	23,396.23	129,271
Cent. Sur. & Ins. Co.	49,632	16,144	21,491	—	11,997
Employer's Liab. Assur.	90,768	59,776	32,858	—	**–1,866
Fid. & Cas. Co.	441,317	353,464	157,991	—	**–70,138
Gen. Acc. Fire & Life Assur.	98,781	70,612	38,327	—	**–10,158
Hdw. Ind. Ins. Co. Minn.	144,993	95,081	45,333	23,307.04	**–18,778
Hartford Acc. & Ind. Co.	436,282	259,515	161,861	—	14,906
Ind. Ins. Co. of North Am.	140,655	109,992	65,123	—	**–34,460
Maryland Cas. Co.	209,727	141,004	74,243	—	**–5,520
New Amsterdam Cas. Co.	115,103	69,595	35,797	—	9,711
Royal Ind. Co.	99,013	29,642	38,417	—	30,954
St. P. Mercury Ind. Co.	345,660	255,168	145,177	—	**–54,685
Standard Acc. Ins. Co.	468,495	208,865	168,658	—	90,972
Travelers Ind. Co.	352,241	243,466	126,102	—	**–17,327
Travelers Ins. Co.	346,167	232,366	123,582	—	**–9,781
U. S. Fid. & Guaranty Co.	228,181	159,433	86,937	—	**–18,189
Western Cas. & Sur. Co.	79,558	73,654	23,867	—	**–17,963
Zurich Gen. Acc. & Liab.	43,820	44,010	17,791	—	**–17,981
TOTAL	$6,020,970	$3,504,241	$2,088,990	$ 195,020	$232,719
NON-STOCK COMPANIES					
Am. Mut. & Liab. Ins. Co.	$ 472,423	$ 236,946	$ 100,154	$ 91,487.42	$ 43,836
Auto Owners Ins. Co.	40,065	14,164	17,508	—	8,393
Employer's Mut. Cas. Co.	240,221	95,826	61,977	48,140.59	34,277
Emp. Mut. Wis. Liab. Co.	2,980,465	1,380,972	1,078,928	484,868.94	35,696
Federated Mut. Impl. & Hdw.	—	—	—	—	—
Hdwe. Mut. Cas. Co.	675,624	337,479	217,551	127,584.54	**–6,991
Iowa Nat. Mut. Ins. Co.	392,371	249,875	129,482	70,493.97	**–57,480
Liberty Mut. Ins. Co.	904,921	373,719	177,365	162,623.00	191,214
Lumbermans Mut. Cas. Co.	232,839	99,110	54,251	41,064.74	38,413
Mut. Crmry. Liab. Ins. Co.	193,760	124,874	34,683	48,620.26	**–14,417
Mut. Service Cas. Co.*	88,649	49,172	36,257	11,194.56	**–7,975
Security Mut. Cas. Co.	108,094	100,210	17,079	27,831.57	**–37,027
TOTAL	$6,329,432	$3,062,347	$1,925,235	$1,113,911	$227,939
GRAND TOTAL	$12,350,402	$6,566,588	$4,014,225	$1,308,931	$460,658

*formerly Am. Farmers Mut. Auto Ins. Co.
**"–" means "Loss" rather than Profit.

APPENDIX III

PREMIUM INCOME AND DISPOSITION
Calendar Year 1948

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 406,651	$ 210,251	$ 304,988	—	**$–108,588
Am. Auto Ins. Co.	102,463	48,369	38,936	—	15,158
Am. Cas. Co.	87,533	56,009	40,003	—	**–8,479
Am. Motorist	54,524	48,901	13,576	28,423.29	**–36,376
Anchor Cas.	1,250,081	538,181	390,025	154,204.21	167,671
Ass. Ind. Corp.	125,585	18,577	29,764	26,484.94	50,759
Bituminous Cas. Ins. Co.	467,125	276,858	148,546	42,594.36	**–873
Cent. Sur. & Ins. Co.	74,289	21,569	31,424	—	21,296
Employer's Liab. Assur.	105,350	61,520	39,928	—	3,902
Fid. & Cas. Co.	485,942	384,743	183,200	—	**–82,001
Gen. Acc. Fire & Life Assur.	125,154	72,101	46,682	—	6,371
Hdwe. Ind. Ins. Co. Minn.	198,470	100,715	60,930	28,153.95	8,671
Hartford Acc. & Ind. Co.	478,291	269,253	172,185	—	36,853
Ind. Ins. Co. of North Am.	167,652	77,115	75,611	—	14,926
Maryland Cas. Co.	211,260	110,595	74,997	—	25,668
New Amsterdam Cas. Co.	149,628	69,312	60,300	—	20,016
Royal Ind. Co.	211,190	132,809	80,463	—	**–2,082
St. P. Mercury Ind. Co.	421,657	249,183	179,204	—	**–6,730
Standard Acc. Ins. Co.	440,569	240,653	159,486	—	40,430
Travelers Ind. Co.	395,612	151,448	134,508	—	109,656
Travelers Ins. Co.	546,574	252,109	184,742	—	109,723
U. S. Fid. & Guaranty Co.	275,701	32,036	107,799	—	135,866
Western Cas. & Sur. Co.	78,774	13,635	27,177	—	37,962
Zurich Gen. Acc. & Liab.	67,991	75,394	26,992	—	**–34,395
TOTAL	$6,928,066	$3,511,336	$2,611,466	$279,860	$525,404
NON-STOCK COMPANIES					
Am. Mut & Liab. Ins. Co.	$ 611,623	$ 271,094	$ 127,218	$ 107,299.77	$106,011
Auto Owners Ins. Co.	62,259	14,300	27,518	2,226.55	18,214
Employer's Mut. Cas. Co.	241,277	167,346	68,764	46,210.36	**–41,043
Empl. Mut. Wis. Liab. Co.	3,178,371	1,772,075	699,242	444,318.65	262,735
Federated Mut. Impl. & Hdw.	63,565	62,382	46,275	158.48	**–45,250
Hdwe. Mut. Cas. Co.	698,274	362,676	245,792	121,259.06	**–31,453
Iowa Nat. Mut. Ins. Co.	438,673	214,437	151,342	68,390.73	4,503
Liberty Mut. Ins. Co.	993,489	676,532	209,626	191,687.00	**–84,356
Lumbermans Mut. Cas. Co.	249,012	103,810	60,759	31,912.82	52,530
Mut. Crmry. Liab. Ins. Co.	218,975	92,854	43,138	58,578.73	24,404
Mut. Service Cas. Co.*	111,732	113,652	51,397	16,049.89	**–69,367
Security Mut. Cas. Co.	140,512	95,658	22,201	71,876.36	**–49,223
TOTAL	$7,007,762	$3,946,816	$1,753,272	$1,159,969	$147,705
GRAND TOTAL	$13,935,828	$7,458,152	$4,364,738	$1,439,829	$673,109

*Formerly Am. Farmers Mut. Auto Ins. Co.
**"–" means "Loss" rather than Profit.

APPENDIX IV

PREMIUM INCOME AND DISPOSITION
Calendar Year 1949

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 392,145	$ 248,003	$ 170,975	$ —	*$–26,833
Am. Auto Ins. Co.	84,857	24,036	38,355	—	22,466
Am. Cas. Co.	101,130	46,749	45,711	—	8,670
Am. Motorist	144,736	71,794	29,526	24,780.78	18,635
Anchor Cas.	1,143,273	576,654	403,575	159,939.33	3,105
Ass. Ind. Corp.	85,818	52,667	25,831	17,032.30	*–9,712
Bituminous Cas. Ins. Co.	421,434	132,235	142,023	32,189.95	114,986
Cent. Sur. & Ins. Co.	79,688	60,755	34,664	—	*–15,731
Employer's Liab. Assur.	60,545	22,830	24,279	—	13,436
Fid. & Cas. Co.	607,967	526,154	214,612	—	*–132,799
Gen. Acc. Fire & Life Assur.	103,717	59,860	41,902	—	1,955
Hdwe. Ind. Ins. Co. Minn.	188,242	126,223	61,179	28,039.25	*–27,199
Hartford Acc. & Ind. Co.	449,718	307,242	170,443	—	*–27,967
Ind. Ins. Co. of North Am.	162,310	133,047	68,008	—	*–38,745
Maryland Cas. Co.	212,628	168,764	76,759	—	*–32,895
New Amsterdam Cas. Co.	177,515	75,845	66,391	—	35,279
Royal Ind. Co.	195,013	124,640	84,051	—	*–13,678
St. P. Mercury Ind. Co.	477,916	380,834	191,166	—	*–94,084
Standard Acc. Ins. Co.	422,577	277,012	155,508	—	*–9,943
Travelers Ind. Co.	377,968	216,089	117,170	—	44,709
Travelers Ins. Co.	337,701	231,007	112,117	—	*–5,423
U. S. Fid. & Guaranty Co.	272,480	166,014	90,191	—	16,275
Western Cas. & Sur. Co.	91,890	51,020	30,691	—	10,179
Zurich Gen. Acc. & Liabl.	103,205	50,574	40,972	—	11,659
TOTAL	$6,694,473	$4,130,048	$2,436,099	$ 261,981	*$–133,655
NON-STOCK COMPANIES					
Am. Mut. & Liab. Ins. Co.	$ 518,352	$ 287,895	$ 116,629	$ 103,685.00	$10,143
Auto Owners Ins. Co.	35,501	3,742	11,882	2,557.89	17,319
Employer's Mut. Cas. Co.	220,112	122,322	67,134	42,063.92	*–11,408
Empl. Mut. Wis. Liab. Co.	2,891,786	1,546,308	618,842	594,854.06	131,782
Federated Mut. Impl. & Hdwe.	155,520	96,926	80,559	25,811.10	*–47,776
Hdwe. Mut. Cas. Co.	595,025	299,885	197,548	102,415.47	*–4,823
Iowa Nat. Mut. Ins. Co.	409,273	200,651	140,790	64,440.24	3,392
Liberty Mut. Ins. Co.	937,256	542,476	202,447	166,608.00	25,725
Lumbermans Mut. Cas. Co.	235,260	138,833	58,109	44,575.78	*–6,258
Mut. Crmry. Liab. Ins. Co.	216,381	147,418	33,323	46,388.59	*–10,749
Mut. Service Cas. Co.*	132,802	58,335	51,793	21,378.75	1,295
Security Mut. Cas. Co.	193,802	78,472	33,915	66,074.11	15,341
TOTAL	$6,541,070	$3,523,263	$1,612,971	$1,280,853	$123,983
GRAND TOTAL	$13,235,543	$7,653,311	$4,049,070	$1,542,834	*$–9,672

*"–" means "Loss" rather than Profit.

APPENDIX V

PREMIUM INCOME AND DISPOSITION
Calendar Year 1950

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 364,266	$ 253,954	$ 181,769	$ —	**$–71,457
Am. Auto Ins. Co.	113,005	54,080	48,705	—	10,220
Am. Cas. Co.	81,350	68,388	37,258	—	**–24,296
Am. Motorist	217,745	83,736	53,783	18,129.24	62,097
Anchor Cas.	979,019	694,860	348,531	116,733.83	**–181,106
Ass. Ind. Corp.	70,432	39,505	20,989	3,787.92	6,150
Bituminous Cas. Ins. Co.	400,541	247,527	133,380	29,035.78	**–9,402
Cent. Sur. & Ins. Co.	53,942	17,141	23,249	—	13,552
Employer's 'Liab. Assur.	183,004	130,739	71,738	—	**–19,473
Fid. & Cas. Co.	579,022	484,216	220,028	—	**–125,222
Gen. Acc. Fire & Life Assur.	95,833	57,167	37,471	—	1,195
Hdwe. Ind. Ins. Co. Minn.	172,817	62,646	57,721	24,822.11	27,628
Hartford Acc. & Ind. Co.	493,479	294,341	185,548	—	13,590
Ind. Ins. Co. of North Am.	187,261	155,447	79,211	—	**–47,397
Maryland Cas. Co.	200,401	132,266	76,152	—	**–8,017
New Amsterdam Cas. Co.	158,573	127,480	58,672	—	**–27,579
Royal Ind. Co.	196,678	144,425	93,029	—	**–40,776
St. P. Mercury Ind. Co.	478,296	164,736	203,754	—	109,806
Standard Acc. Ins. Co.	392,497	288,520	156,214	—	**–52,237
Travelers Ind. Co.	325,545	200,323	109,383	—	15,839
Travelers Ins. Co.	265,643	141,088	90,850	—	33,705
U. S. Fid. & Guaranty Co.	302,376	232,765	98,272	—	**–28,661
Western Cash. & Sur. Co.	95,692	60,110	32,057	—	3,525
Zurich Gen. Acc. & Liab.	102,341	91,573	41,857	—	**–31,089
TOTAL	$6,509,758	$4,227,033	$2,459,621	$ 192,509	**$–369,405
NON-STOCK COMPANIES					
Am. Mut. & Liab. Ins. Co.	$ 450,325	$ 363,805	$ 96,370	$ 100,107.00	**$–109,957
Auto Owners Ins. Co.	90,537	65,389	28,429	5,478.16	**–8,759
Employer's Mut. Cas. Co.	231,764	150,231	80,886	46,478.37	**–45,831
Empl. Mut. Wis. Liab. Co.	2,628,467	1,648,445	607,176	463,487.38	**–90,641
Federated Mut. Impls. & Hdw.	199,026	108,690	94,537	37,686.46	**–41,887
Hdwe. Mutl. Cas. Co.	514,014	287,051	179,391	100,048.31	**–52,476
Iowa Nat. Mut. Ins. Co.	383,422	291,014	131,897	57,086.89	**–96,576
Liberty Mut. Ins. Co.	838,947	487,226	184,568	170,361.00	**–3,208
Lumbermans Mutl. Cas. Co.	230,596	126,073	60,877	47,325.44	**–3,679
Mut. Crmry. Liab. Ins. Co.	210,480	133,108	39,570	50,003.13	**–12,201
Mut. Service Cas. Co.*	141,975	47,216	47,988	24,900.30	21,871
Security Mut. Cas. Co.	179,060	137,479	34,021	84,518.44	**–76,958
TOTAL	$6,098,613	$3,845,727	$1,585,710	$1,187,478	**$–520,302
GRAND TOTAL	$12,608,371	$8,072,760	$4,045,331	$1,379,987	**$–889,707

*Formerly Am. Farmers Mut. Auto Ins. Co.
**"–" means "Loss" rather than Profit.

APPENDIX VI

PREMIUM INCOME AND DISPOSITION
Calendar Year 1951

STOCK COMPANIES	NET EARNED PREMIUM	INCURRED LOSSES	ESTIMATED EXPENSES	DIVIDENDS TO POLICYHOLDERS	PROFITS
Aetna Cas.	$ 458,359	$ 369,142	$ 211,724	$ —	***$–122,507
Am. Auto Ins. Co.**					
Am. Cas. Co.	125,356	79,150	50,838	—	***–4,632
Am. Motorist	242,822	82,204	41,444	58,320	60,854
Anchor Cas.	1,063,088	672,621	398,741	93,285	***–101,559
Ass. Ind. Corp.**					
Bituminous Cas. Ins. Co.	373,986	273,775	178,485	23,537	***–101,811
Cent. Sur. & Ins. Co.	55,382	28,893	24,437	—	2,052
Employer's Liab. Assur.	258,330	428,440	78,419	—	***–248,529
Fid. & Cash. Co.	719,326	446,221	308,937	—	***–35,832
Gen. Acc. Fire & Life Assur.	91,898	91,906	30,650	—	***–30,658
Hdwe. Ind. Ins. Co. Minn.	181,493	90,385	60,042	25,262	5,804
Hartford Acc. & Ind. Co.	560,713	512,101	199,052	—	***–150,440
Ind. Ins. Co. of North Am.	192,995	123,821	75,466	—	***–6,292
Maryland Cas. Co.	224,848	132,221	88,223	—	4,404
New Amsterdam Cas. Co.	165,611	138,876	62,339	—	***–35,604
Royal Ind. Co.**					
St. P. Mercury Ind. Co.	563,468	294,011	236,005	—	33,452
Standard Acc. Ins. Co.	353,784	325,500	157,053	—	***–128,769
Travelers Ind. Co.	445,035	322,238	143,699	—	***–20,902
Travelers Ins. Co.	473,903	330,868	145,692	—	***–2,657
U. S. Fid. & Guaranty Co.	346,069	243,236	135,133	—	***–32,300
Western Cas. & Sur. Co.**					
Zurich Gen. Acc. & Liab.	123,574	70,517	43,264	—	9,793
TOTAL	$7,020,040	$5,056,126	$2,669,643	$ 200,404	***$–906,133
NON-STOCK COMPANIES					
Am. Mut. & Liab. Ins. Co.	$ 443,059	$ 361,664	$ 95,669	$ 71,124	***$–85,398
Auto Owners Ins. Co.	94,234	61,683	36,988	5,673	***–10,110
Employer's Mut. Cas. Co.**					
Empl. Mut. Wis. Liabl. Co.	2,984,711	2,146,326	575,178	430,280	***–167,073
Federated Mut. Impl. & Hdw.	220,414	141,809	104,541	25,322	***–51,258
Hdwe. Mut. Cas. Co.	545,932	326,367	194,024	1	25,540
Iowa Natl. Mut. Ins. Co.	382,258	308,554	153,351	51,713	***–131,160
Liberty Mut. Ins. Co.	986,611	679,863	186,503	118,463	1,782
Lumbermans Mutl. Cas. Co.	175,309	145,540	48,837	45,954	***–65,022
Mutl. Crmry. Liab. Ins. Co.	203,450	135,779	39,393	46,719	***–18,441
Mut. Service Cas. Co.*	138,376	110,960	63,641	23,081	***–59,306
Security Mut. Cas. Co.	175,701	155,563	22,408	69,115	***–71,385
TOTAL	$6,350,055	$4,574,108	$1,520,533	$ 887,445	***$–632,031
GRAND TOTAL	$13,370,095	$9,630,234	$4,190,176	$1,087,859	***$–1,538,164

*Formerly Am. Farmers Mut. Auto Ins. Co.
**Not on file at the date this table was computed May 8, 1952.
***"–" means "Loss" rather than Profit.

II

Strengthening the Rehabilitation of the Injured Worker

It is recognized today that the greatest weakness of most if not all workmen's compensation laws is their failure to enable and facilitate the rehabilitation of the injured worker. The science of rehabilitation in its medical and psychiatric aspects as well as in the vocational training has made great strides especially during and since World War II. The time has now come to adapt the compensation laws to the new avenues of achieving the goal of restoring the injured worker to physical, social and economic self-reliance.

In accordance with this need the Federal Security Agency and the U. S. Department of Labor sponsored in 1950 a National Conference on Workmen's Compensation and Rehabilitation which produced many valuable hints and suggestions for the development of a rehabilitation program.[1] Yet the translation of these ideas and proposals into actual practice presented numerous problems and difficulties. It thus seemed to be desirable to the commission to propose a special plan of its own which not only takes account of experience of other states but also attempts to rely on and utilize the existing institutions, facilities and resources of this state. (1) The Commission started with the fundamental proposition that the new plan should not be loaded with details, but provide for a mechanism of self-improvement as experience accumulates. (2) The Commission took careful account of the fact of the existence of the federal-state rehabilitation program created in application of and compliance with the Vocational Rehabilitation Act of June 2, 1920 and the Vocational Rehabilitation Act Amendments of 1943.[2] The commission also noted that federal aid is dependent upon the requirement that the state board of education functioning as the state board of vocational education which is in charge of the existing state plan[3] must remain the "sole" agency for the administration, supervision and control of the state plan,[4] but that the existing law does not preclude and already provides

[1] U. S. Department of Labor, Bureau of Labor Standards, Bull. No. 122.
[2] 29 U. S. C. §31 ff.
[3] Minn. Stat. §120.32 (1949).
[4] 29 U. S. C. §32.

for a plan of cooperation between the department of labor, industrial commission and the State Board of Education.[5]

The commission felt that two main objects should be accomplished under the new plan: (1) that cases suitable for medical or other rehabilitation services should be spotted at the earliest feasible moment and be processed by expert personnel and (2) that the existing private or public facilities and services should be utilized to their full extent.

The Commission therefore proposes that the initiation of the necessary steps should lie with the industrial commission and that a special Bureau for Workmen's Rehabilitation should be created for that purpose in the commission which is to canvass all notices of work-accidents and to determine whether the initiation of rehabilitation procedures appears to be indicated.

The commission is likewise convinced that further steps require cooperation between the division of vocational rehabilitation and the industrial commission and that such cooperation in the accomplishment of the rehabilitation program should be strengthened. It believes further that the two departments in the evolution of their programs should have the benefit of a special Advisory Council composed of persons having expert knowledge of, or representing groups specially interested in, the rehabilitation of injured workers. In view of the fact that such advisory councils have had beneficial influence on the administration of employment security laws, it was felt that the creation of such an advisory council was preferable to the creation of a new commission as in Massachusetts.[6]

The commission takes the view that the medical side of the rehabilitation program (medical restoration) should be part of the unlimited medical benefit program of the compensation law (S 176.15), but that retraining and other social service programs should be defrayed from the funds available under the federal-state rehabilitation program.

The commission also felt that the available rehabilitation facilities in the state to which referral is made should be canvassed and listed by the new bureau for workmen's rehabilitation. This bureau should also accumulate a list of physicians and technicians trained in rehabilitation, but

[5]Minn. Stat. §120 (1949).
[6]Mass. Ann. Laws c. 24 §10, c. 152 §30A (Cum. Supp. 1950).

any referral should be made only under the supervision of the attending physician.

Finally the commission believes that maintenance during physical or vocational rehabilitation should be extended to all types of injuries (not only to schedule injuries) and that the other limitations of section 176.11, subdiv. 3 (43) should be liberalized.

PROPOSED STATUTES

For an Act Relating to the Rehabilitation of Workers who have Sustained Injuries or Occupational Diseases Compensable under the State Workmen's Compensation Law; providing for an Advisory Council to Study Problems Relating to the Rehabilitation and Compensation of Injured Workers and Recommending Appropriate Procedures, and for a Bureau of Workmen's Rehabilitation in the Division of Workmen's Compensation Division of the Industrial Commission to Carry out the Provision of this Act.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. It is the policy of the state of Minnesota to restore the injured worker as soon and nearly as possible to the status of self-support as an able bodied employee, and it is the responsibility of the industrial commission to make a final award only when the above policy has been carried out to its most practical extent.

Sec. 2. There shall be created an advisory council on rehabilitation of injured workers to be appointed by the governor and consisting of one representative of the medical profession who shall be well versed in physical rehabilitation, one representative of the hospitals, one representative of the insurance carriers writing compensation insurance in the state, two representatives of employees, and two representatives of employers.

The governor shall appoint one of the council as chairman and fill any vacancy in the council. Each member of the council shall serve at the pleasure of the governor and until his successor has been appointed and shall receive fifteen dollars for each day or portion thereof spent at meetings plus traveling expenses incidental to the attendance of meetings and other performance of their duties.

The council shall meet biannually or as often as it deems necessary under the direction of the commissioner

in charge of the division of workmen's compensation of the industrial commission who shall provide suitable quarters, clerical help, and give further assistance as the council may deem necessary. The commissioner in charge of the division of workmen's compensation of the industrial commission and the director of the vocational rehabilitation division of the State Board of Education shall attend all council meetings, or designate a representative of his division to attend for him; *provided,* that the council shall in no way be under the control of the industrial commission or State Board of Education.

The function of the council shall be to advise the industrial commission and the State Board of Education on questions concerning the administration and improvement of the workmen's compensation law especially as it relates to the rehabilitation of the injured worker in all aspects, to assist in the procurement and development of adequate facilities and personnel for an effective rehabilitation program and to devise procedures which will facilitate and assure the physical and vocational rehabilitation of the injured worker. The council may file reports of its findings and recommendations to the governor and the legislature.

Sec. 3. There shall be created a bureau of workmen's rehabilitation under the control and supervision of the division of workmen's compensation and appointed by the industrial commission under Minnesota statute, section 175.13 (1949) to consist of personnel well versed in rehabilitation.

The bureau, with the advice and assistance of the council created by section two of this act, shall investigate, assemble, and keep a list of adequate facilities and personnel qualified to render rehabilitation treatment.

The bureau shall promptly study each notice of injury incurred by a worker under the workmen's compensation act. If it concludes that rehabilitation is indicated it shall immediately take the necessary steps to inform the injured worker of the services available to him under the program and of the facilities and personnel at his disposal and notify the director of the division of vocational rehabilitation of the case pursuant to the policy of Minnesota Statute, section 120.33 (1949). In each case, recommendation of facilities and personnel shall only be done after consultation with the attending physician who shall retain general supervision of treatment.

Sec. 4. Where a neutral physician is appointed under

Minnesota Statute 176.19 (1940) the choice of such physician shall be made with due consideration of the bureau's advisability as to rehabilitation.

For an Act Relating to Medical Rehabilitation Treatment of Workers Sustaining Compensable Injuries or Occupational Diseases under the State Workmen's Compensation Law; Amending Minnesota Statute, section 176.15 (1949).

Be it enacted by the Legislature of the State of Minnesota:

The employer shall furnish such medical, surgical, and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability, to cure and relieve from the effects of the injury. *Such treatment shall also include all treatments necessary to complete physical rehabilitation.* (Rest of section unchanged).

For an Act Relating to Lump Sum Payments of Compensation under the Workmen's Compensation Law; Amending Minnesota Statute, section 176.21 (1949).

Be it enacted by the Legislature of the State of Minnesota:

Minnesota Statute, section 176.21 is amended to read as follows:

The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the commission and on such terms and conditions as the commission may prescribe.

The commission shall authorize no lump sum payment until it has received from the bureau of workmen's rehabilitation a recommendation as to the advisability of granting the same, but such recommendation shall not be binding on the commission. (Rest of section unchanged.)

For an Act relating to Compensation under Workmen's Compensation while Retraining; Amending Minnesota Statute, section 176.11, subdivision 3, clause 43.

Be it enacted by the Legislature of the State of Minnesota:

Minnesota Statute, section 176.11, subdivision 3, clause 43 is amended to read as follows:

In addition to the compensation provided in this (SCHEDULE FOR LOSS OR LOSS OF THE USE OF A MEMBER) *chapter,* the compensation during the period

of retraining for a new occupation, as certified by the division of re-education, as certified by the division of re-education, operating under Laws 1919, Chapter 365, shall be 66 2/3 per cent of the daily wage at the time of the injury, not beyond 25 weeks, PROVIDED THE INJURY IS SUCH AS TO ENTITLE THE WORKMAN TO COMPENSATION FOR AT LEAST 75 WEEKS IN THE SCHEDULE OF INDEMNITIES FOR PERMANENT IMPAIRMENTS provided the commission, ON APPLICATION THERETO *after consultation with its bureau of workmen's rehabilitation,* finds that such retraining is necessary and makes an order for such compensation; (Rest of section unchanged).

III.

BENEFIT LEVELS AND STRUCTURES

1.

The problem of compensation benefits adequacy in general.

Representatives of labor as well as federal officials versed in workmen's compensation[1] and scholars of the field[2] have in recent years frequently criticised the existing state compensation programs for having failed to keep step with the rising cost of living. They have come to the conclusion that benefits are today less liberal than they were at the time of the initiation of the system and have cited the marked downward trend in compensation insurance rates as conclusive proof of that fact.

In Minnesota, indeed, like in most states, until recently a steady and pronounced downward trend of the compensation insurance rates can be observed. Table 2 shows that, taking the state rate level for 1935—i. e. the end of the depression—as unity, the state rate level for 1949—which is the last year for which all necessary information by policy years was available at the meeting of this study—had by comparison decreased to a mere .462. The present rate level would in this scale be slightly higher and be fixed at .489. However, movements in the compensation insurance rate level alone seem to be not a reliable test for measuring changes in the liberality of the system.

In the first place the changes in the rate level indicate merely modifications of the *standard* rates and do not take account of the effect of the merit rating plans, etc. In addition, in Minnesota, further inaccuracies are introduced by the change made in 1946 in the beginning of the policy year.

[1]See, for instance, Dawson, Present Conditions of Workmen's Compensation Laws and Possible Changes in Workmen's Compensation Problems 1950 (U. S. Dep't. of Labor, Bureau of Labor Standards, Bull. No. 142) 60, at p. 62.
[2]Reade, Adequacy of Workmen's Compensation (1948)

If the average premium paid on the unit of exposure ($100 of the payroll) is taken as standard of comparison, table 3 indicates that the downward trend of the average paid premium rate for the period commencing with policy year 1935 and ending with policy year 1949 is less pronounced: the average premium decreased from $1.75 to $.97 or only by a factor of .554. More recent data are unfortunately not available.

A somewhat more significant comparison, however, than that of premium rate levels, is furnished by a comparison of the growth of the exposed payrolls with that of the benefit payments. Table 2 shows indeed that while the exposed payrolls increased between policy years 1935-1949 by a factor of 4.169, the benefit payments in that period increased only by a factor of 3.119.

In general it is assumed that this lag in the rise of benefit payments behind that of the exposed payrolls is a sign of the growing loss of adequacy of the programs, and principally due to the increasingly restrictive effects of the ceilings of weekly payments and other maximum amounts set by the compensation laws. It has been pointed out specifically in this connection that average weekly wages have risen faster than the ceilings in the laws and that therefore an increasing number of workers get less than 66 2/3 per cent of the wages as benefits.

The following table shows that this is also true for Minnesota and that the statutory ceilings have failed to keep in step with the rise in average weekly wages.

TABLE 8

Relation Between Average Weekly Wages of Injured Workers and Statutory Ceilings

Fiscal Year Ending June 30	Average weekly wage of injured worker[1]	Maximum weekly compensation	Percentage: Maximum compensation to average wage
1935	$22.54	$20.00	88.73%
36	23.22	"	86.13
37	24.96	"	80.13
38	26.36	"	75.87
39	26.61	"	75.16
1940	26.69	"	74.93
41	26.01	"	76.89
42	29.59	"	67.66
43	34.90	"	57.30
44	37.01	"	54.04
45	38.75	"	51.61
46	40.27	$24.00	59.61
47	42.77	"	56.11
48	46.93	$27.00	57.53
49	51.04	"	52.90
1950	52.98	$30.00	56.63

The table, however, indicates in addition that the increase of the average weekly wage of the injured worker has likewise not kept step with the rise of the total exposed payrolls, and proves how misleading it is to measure the liberality of a system by merely comparing two sets of data pertaining thereto.

It is quite true, that the ceilings have increased the effect of certain limitations, but it must not be forgotten that the system has been liberalized in many other ways, that in the course of time the overall distribution and allocation of benefits, especially their duration, has undergone a great deal of liberalizing changes.

It is particularly noteworthy that in Minnesota, in the period constituted by the policy years 1935-1949, the unlimited indemnity losses have increased by practically the same ratio as the *unlimited* medical benefits, the latter by the factor 3.104, the former by the factor 3.128. As a result it can be assumed that the reasons which have held the increase in total benefit payments down were not only the ceilings on payments but also other causes flowing from changes of technology and industrial methods, especially safety measures and programs.

According to the Bureau of Labor statistics the indices of injury frequency rates in manufacturing decreased from 1935 to 1949—with a sharp upturn during the war years—from 88.1 to 61.2 or by a factor of .695.[3] The changes in severity rates for the same period were unfortunately not given. This reduction in accident frequency and, insofar as known, in accident severity, must, of course, reflect itself in decrease of benefit payments without lessening of the "liberality" of the program.

It can, therefore, be concluded that though it must be conceded, that the depressing effect resulting from the ceilings on benefits has become more pronounced in the course of time partly due to inflationary trends, there is no evidence that the overall "liberality" of the Minnesota systems has suffered. Substantial changes have broadened the Act over a course of years, such as: Unlimited medical and hospital payments, compulsory coverage to all employees except domestic and agricultural help, coverage of occupational diseases, the extension of the duration of benefits of scheduled injuries, substantial increases on

[3]Work Injuries in the United States, During 1949, U. S. Dep't. of Labor, Bureau of Labor Statistics, Bull. No. 1025 p. 8 and 23. Parity or 100 in this scale is the frequency rate for 1926.

death benefits, increased payments under the second injury fund, and numerous other changes.

The adequacy of the system must be judged therefore by its total performance in various types of cases and not by mere comparison of isolated items and data.

Since the Minnesota compensation law provides for unlimited medical benefits any shortcomings in benefit payments must concern the "indemnity" or income-loss benefits. As a result the Commission decided to study this aspect further, with the exception of the problem of maximum weekly benefits. The Commission believed that its function was to engage in long-range planning and recommendations, and that the problem of setting maximum weekly benefits, being subject to constant review, should, therefore, be left to each session of the Legislature.

According to the existing compensation laws benefits are paid for "disability" and dependency in death cases. Disability is divided into two major types, *viz.* temporary and permanent; both temporary or permanent disability may be either total or partial. In the case of permanent partial disability two types of awards are provided for. For listed categories of disabling injuries compensation is provided for at 66 2/3 per cent of the daily wage at the time of the injury for specified period, of time (so-called schedule awards), for the remaining partial permanent cases compensation will be awarded at the rate of 66 2/3 per cent of the reduction in earning capacity for a period not exceeding a stated period (so-called percentage awards). In the case of permanent disability the total amount payable in weekly payments is limited to $18,000.

The operation and effect of these limitations has been the object of much criticism and said to be the cause of many inequities.

In its Annual Report on Industrial Accidents in Illinois for 1950 the Illinois Industrial Commission has pointed out that the average daily compensation of the permanently injured worker is much lower than that for a worker suffering a mere temporary disability. This result was reached on the basis of measuring permanent disabilities by a standard time loss allocated to each type of disability. Such standard time charges have been developed over a long period of time. The time charges now commonly in use by official statistics are the ones given in "Method of Compiling Industrial Injury Rates, approved by the American Standards Association 1945."

Type of Disability	Compensation* Paid	Days lost** or charged	Average compensation per such day
Fatal	1,359,715	1,914,000	0.71
Permanent Total	247,745	192,000	1.29
Permanent Partial	6,020,414	3,600,395	1.67
Temporary	2,988,504	798,556	3.74

*Minnesota, Department of Labor and Industry, Thirty-Second Biennial Report, p. 158.
**_Ibid._, p. 162.

For the biennium July 1st 1948—June 30, 1950 the following Minnesota figures derive.

This table shows that the average compensation per day last paid to the permanently disabled workers is substantially lower than that in the temporary cases. As a result the commission felt that a detailed factual study of the effect of workmen's compensation law in cases of permanent total and severe partial disability was in order.

2.

Benefits for permanently disabled worker.

In order to get an adequate picture of the effect of the provisions of the workmen's compensation law relating to benefits for permanent total or partial disability on the status of workers with permanent or severe partial disability, the Interim Commission concluded a contract with the Board of Regents of the University of Minnesota for the undertaking of such a study to be made by the staff of the Industrial Relations Center. The study was completed and transmitted on October 1st, 1952, and is on file in the Minnesota Law Library.

The study which is appended as a separate part of this report evaluated data gathered from "interviews of a statewide sample of severe permanent partial and permanent total cases, randomly selected from the files of the Minnesota Industrial Commission". The sample consisted of 18 "permanent totals" and 50 "severe permanent partials".

The study of the eighteen *permanent total* disability cases indicates that the disabled workers' income *after* the expiration of the compensation benefits is totally inadequate unless they have reached an age where benefits under the federal Old-age and Survivors Insurance program or under the federal-state Old-age Assistance program are available.

The study of the fifty cases with *severe permanent partial disability* shows a more complex picture. Severe partial disability for the purposes of the study was defined as disability creating a chargeable time loss of 2400 and more days, comprising thus the cases of the loss of all

fingers of one hand or the whole hand, of one foot, arm or leg or of an arm below elbow or leg below knee, of both eyes or both ears. The investigation disclosed that about 55 percent of the workers with severe permanent partial disabilities may expect to return to the labor market with a real income of about 80 to 90 percent of their pre-injury earnings. About 33 percent, however, can at best expect to return to the labor market at an income which constitutes only a small fraction (20 percent or less) of their pre-injury earnings. The factors which determine successful return to the labor market are manifold and comprise age, skill, type of injury, general level of intelligence and training.

While the status of the injured worker during the period in which benefits are paid *on an average* does not undergo a marked depression of his standard of living and in some instances even shows an improvement, the plight of the worker who does not succeed to make an occupational adjustment after his injury is very grave after the benefits have run out.

In the opinion of the Commission the two paramount problems presented by the permanent disability cases are the questions:

(1) Whether workers with injuries originally classified as partial disability cases should be entitled to further benefits if it turns out that they are unable to return to the normal labor market.

(2) Whether the statutory limitations on the aggregate amount of benefits payable for permanent total disability (Minn. Stat. 1949 §176.11 Subd. 4 as amended by Minn. Laws 1951 c. 456) should be eliminated.

a. With respect to the first question it should be noted that the present law now allows to a large extent the necessary adjustment of the awards. In the first place, according to Minnesota law, if an injury—although falling under one of the categories of the schedule for permanent partial disability—causes in effect permanent total disability, the compensation due to the injured worker is for total disability and not merely at the rate provided for that particular schedule type (see especially in this connection the decision of the Supreme Court in Berg v. Sadler (1951) 235 Minn. 214, 50 N. W. 2d 266.) In the second place, the Supreme Court has steadily adhered to a liberal *industrial* definition of total disability (see especially Castle v. City

of Stillwater (1952) 235 Minn. 502, 51 N. W. 2d 370). Finally, the present law already provided in the most liberal way for continuing jurisdiction of the Industrial Commission to grant additional benefits, Minn. Stats. 1949, Section 176.60 provides: "At any time after an award has been made and before writ of certiorari issued by the Supreme Court, the commission may, for cause, upon application of either party. . . . set the award aside and grant a new hearing and determine the matter on its merits and make such findings of fact, conclusions of law and award or disallowance of compensation or other order, as the . . . . provisions of this chapter shall in its judgment require." It follows from this section that the Industrial Commission has the power to change an award for permanent partial disability into one for permanent total disability, "at any time" provided that it considers "good cause" to be present and that no writ of certiorari has been issued as yet. The power thus granted has also actually been exercised for the purpose of transforming partial disability awards into such for total disability.

It seems to be advisable, however, to specify expressly that an employee who has obtained an award for permanent partial disability may within two years from the exhaustion of his indemnity benefits apply for a change of his award into one for permanent total disability, if at that time it has become evident that the original injury caused the latter type of disability. Although generally speaking petitions under Minn. Stats. 1949 §176.60 have no time limit, except where the continuing jurisdiction of the Industrial Commission is cut off by the issuance of the writ of certiorari from the Supreme Court (Rasmussen v. City of St. Paul (1943) 215 Minn. 458), it would seem proper to limit petitions for the modification of an award because of the mistaken evaluation of the degree of the permanent disability to two years from the exhaustion of the indemnity benefits in cases *where the original injury itself has not subsequently changed its character.*

It also seems to be desirable to modify the limitation flowing from the statutory clause "and before the writ of certiorari issued by the Supreme Court". Certainly, the assumption of jurisdiction by the Supreme Court deprives the administrative tribunal of its continuing jurisdiction until the Court has decided the controversy. But it seems to be in the interest of a fair administration of workmen's compensation that after the judgment *in so far as constitutionally possible* a continuing jurisdiction should again be conferred upon the Commission. In the leading case of Orcutt v. Trustees of Wesley M. E. Church 174 Minn. 153 the Supreme Court held that under the present statute once the Supreme Court has taken jurisdiction and rendered judgment it shall be final and conclusive and deprive the Commission of its power to grant rehearings, unless the Court has remanded the cause for that purpose in accord with the law governing courts. But in pointing out that a lower court lacks power to vary the judgment of an appellate court, the opinion in question added cautiously the qualification "unless there be a statute conferring authority to do so." Consequently it seems to be recognized in Minnesota that at least to some extent the power to subsequently modify judicially determined rights may by statute be conferred upon administrative tribunals.

b. The second of the above named problems, i. e., whether the statute should eliminate any limitations on the aggregate benefit amount receivable for permanent total disability, presents a much more complex and basic policy question. It really involves the fundamental social issue of whether under the existing social and economic system a benefit limit should be drawn beyond which the income maintenance of the disabled worker is no longer an appropriate obligation of the industry in whose service he was injured, but of the society as such. The question is further complicated by the fact that the federal government has provided for a special assistance program for the permanently and totally disabled, supported by matched federal and state contributions in states which have adopted an approved system (42 USC §1351) and that thus a state which imposes the income maintenance of industrially injured workers with total and permanent disability upon its own industry without limits may, nevertheless, through the federal conduit, contribute to the maintenance of such workers in another state which has refused to place such burden upon its industry.

Yet since basically the industry and its customers should bear the loss resulting from industrial injury to its manpower it is believed that this principle outweighs all contravailing economic considerations. It is therefore recommended to eliminate from the act the aggregate ceiling on benefits for permanent total disability and to pay such benefits, subject to the weekly ceilings, for the whole period of disability, i. e., for life. It may be observed that a

similar regulation exists in 19 jurisdictions,[1] i. e., Arizona, California, Colorado, Delaware, District of Columbia, Idaho, Illinois, Massachusetts, Missouri, Nebraska, Nevada, New Jersey, New York, North Dakota, Ohio, Oregon, Washington, West Virginia and Wisconsin, and under the Longshoremen and Harbor Workers' Act. In some of these jurisdictions the percentage of wages payable as benefits or the weekly ceilings are reduced below the standard rate after the disability has continued beyond a certain period, varying from 300-400 weeks.

It is believed that no such reduction is necessary, but that benefits payable under the old-age and survivors insurance system should be credited on the benefit payments in the aggregate of $18,000 have been made.

3. Dependents' Allowances

The Commission studied the question of whether Minnesota should abandon the system of sliding but uniform benefit levels depending essentially on the average pre-injury wage and introduce dependents' allowances for wage-earners with large families.

The Commission was greatly impressed with the fact that both the spokesmen for the A. F. of L. and for the employers expressed adversity to the introduction of a system of benefits which varies according to certain personal circumstances of the injured wage-earner. The reasons given for this attitude were chiefly of a two-fold character: (a) that the emphasis on needs in determining benefits contravenes the American conception of social insurance and accepted social policy, and (b) that the differentiation in benefits would lead to discriminatory hiring practices.

Evidently the second argument carries weight only as long as it is permitted to charge the additional benefits for dependents on the possible adverse experience of the particular employer under the various experience rating plans. If the statute specifically prohibited the inclusion of this type of benefits within the individual experience ratings, this type of additional benefits will at the most increase the over-all rate of the particular classification, but not affect the relative cost standing of the individual enterprise. The Commission believes that this danger of a small over-all increase would not be a sufficient incentive to discrimina-

[1]See Analysis of Provisions of Workmen's Compensation Laws and Discussion of Coverages (Chamber of Commerce of the United States) 1952, p. 20.

tory hiring or firing practices, especially in view of the fact that other personal factors may have a much more pronounced effect.

The first argument which goes to a basic policy question is intrinsically much more persuasive and the Commission has hesitated considerably to recommend the adoption of defendants' allowances in certain cases and within certain limits. Yet the Commission has recognized that the presently existing system with its floor for, and ceiling upon, weekly benefit payment,—especially in the absence of corresponding adjustments of the premium base—already constitutes a definite departure from a social insurance system based exclusively on the past earnings of the beneficiary. In addition, in determining the proper general benefit level the Commission was forced to face the fact that there are certain limits on either side. On the one hand it is obvious that the benefits must be high enough to protect the injured worker and his family, at least for a reasonable period, from an oppressive deterioration of his *earned* standard of living. On the other hand the existing competitive economy seems to set a limit on the costs of production which the costs for social security cannot exceed without destroying its own base. The soundest way to obviate the danger of overstepping on either side the bounds within which a social insurance system such as workmen's compensation affords the broadest protection for acknowledged needs, seemed to lead to the conclusion that dependents' allowances in certain hardship cases is the most feasible solution of the dilemma.

The Commission was buttressed in its decision by the fact that dependents' allowances exist in other states both in unemployment insurance and in workmen's compensation At present there are thirteen states (Alabama, Arizona, Idaho, Illinois, Massachusetts, Michigan, Montana, Nevada, North Dakota, Oregon, Utah, Washington and Wyoming) which vary their benefits in disability cases according to the number of dependents.[2] As this list indicates, dependents' allowances are not only adopted in jurisdictions possessing exclusive state funds[3] (as was argued during the hearings), but also in states with a system of workmen's compensation comparable to that in Minnesota, as for instance Alabama, Illinois, Massachusetts, Michigan and Utah.

The specific regulation of the dependents' allowances

[2]State Workmen's Compensation Laws as of Sept. 1950 (U. S. Dept. of Labor, Bur. of Labor Standards, Bull. No. 125) p. 29.
[3] Nevada, North Dakota, Oregon, Washington and Wyoming.

required attention being given to certain basic policies as well as to special features of the Minnesota act. In the first place it was clear that the standard benefits plus the dependents' allowances should in no case exceed or even fully equal the actual pre-injury wage. Otherwise the system would contain a substantial incentive to malingering and lose its function as a mere palliative against undue reduction of the standard of living as a result of work injuries. In addition, in view of the preferences of the spokesmen for employers and labor it was decided to adopt dependents' allowances only for the cases in which the number of dependent children exceeded a standard set as three.

The Commission noted that the jurisdictions which have adopted additional compensation for dependents show great variations in their approach. In Michigan,[4] for instance, the statute does not vary the basic percentage of the average wage upon which the benefits are computed and modifies only the floors to and the ceilings upon the weekly benefit payments according to the number of dependents with the result that only the low and the high wage brackets benefit from the system. In Massachusetts[5] flat amounts are added for each dependent who is such as a matter of law, with the *proviso* that the actual pre-injury wage must not be exceeded; this system discriminates thus, at least relatively, against workers with higher earnings. In Montana[6] both the percentage of the pre-injury wages which is used for the computation of the benefits and the ceilings on such benefits vary with the number of dependents, but the minimum amount remains constant in all cases. In Illinois[7] maximum amounts, minimum amounts, and the determinative wage percentages are increased according to the number of dependent children in question.

The Commission believes that the method adopted in Illinois is best suited to accomplish the desired results. It proposes therefore that for each dependent child exceeding three the minimum and maximum weekly payments should be increased by 5 percent for each additional child and that the standard percentage of the weekly wage used in the computation of benefits should likewise be increased by 5 percent, provided that the aggregate increases of minima, maxima, and percentages should not exceed 15 percent and

[4]Michigan Laws 1949, Act. No. 238, amending Mich. Stats. 1948 §412.10.
[5]Mass. Ann. Laws (vol. 4A 1950) Ch. 152 §35A.
[6]Montana, Laws 1951 c. 48 §2 amending §92-702 Rev. Codes of Montana.
[7]Ill. Rev. Stats. 1949 §145(j).

that the minimum should not exceed the actual wages. The Commission believes that such regulation will alleviate some the growing effects of the ceilings on benefits without burdening the industry with costs which will affect its competitive standing.

Proposed Statutes to Part III, SECTION 2.

Be it enacted by the Legislature of the State of Minnesota:

Minnesota Statute, section 176.60 is amended to read as follows:

Except where a writ of certiorari has been issued by the Supreme Court and the matter is still pending in that court or where as a matter of law the determination of the Supreme Court cannot be subsequently modified, the commission may, for cause, at any time after an award upon application of either party and not less than five days notice in writing to all interested parties, set the award aside and grant a new hearing and thereon determine the matter on its merits and make such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the pleadings and the evidence produced before it and the provision of this chapter shall in its judgment require.

Where an employee has received benefits for permanent partial disability under section 176.11 Subd. 3 he may until two years after the exhaustion of such benefits petition for additional benefits under section 176.11 Subd. 4 if at that time it is evident that the original injury caused permanent total disability as defined in section 176.11 Subd. 5.

Be it enacted by the Legislature of the State of Minnesota:

Minnesota Statute, section 176.11, subdivision 4 is amended to read as follows: For permanent total disability, as defined in subdivision 5, 66⅔ per cent of the daily wage at the time of the injury, subject to a maximum compensation of $32 per week and a minimum compensation of $18 per week. If, at the time of the injury, the employee receives wages of $18 or less per week, he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, (BUT THE TOTAL AMOUNT PAYABLE UNDER THIS SUBDIVISION SHALL NOT EXCEED $10,000 IN ANY CASE) *but if the employee is eligible for old-age and*

survivors insurance benefits, such benefits shall be credited on the compensation benefits payable under this subdivision after a total amount of $18,000 has been paid. (Rest of subdivision unchanged)

Be it enacted by the Legislature of the State of Minnesota:

Minnesota Statute section 176.11 is amended by adding the following subdivision:
Subd. 8

(1) When the number of wholly dependent children of a disabled worker exceeds three the benefits specified in this section shall be increased by 5 percent of the daily wage at the time of the injury for each additional wholly dependent child, but the total additional benefits shall not exceed 15 percent of such wage. The minimum and maximum amounts of weekly compensation payments specified in this section shall likewise be increased by 5 percent for each such additional wholly dependent child, but the total increases shall not exceed 15 percent of these amounts and in no case shall the additional benefits herein provided increase the total benefit payments above the amount of the daily wage at the time of the injury.

(2) The additional benefits herein provided shall not be taken into account in determining the compensation insurance rate of the employer under the systems of merit and experience rating authorized in accordance with section 79.21, but may be taken into account in fixing the rate for the applicable classification.

Part 4.

TECHNICAL IMPROVEMENTS

In compliance with the legislative mandate to revise and codify the existing laws relating to workmen's compensation so as to simplify and harmonize the existing provisions the Commission has studied controlling sections with the view to recommending technical improvements which would either improve and facilitate the administration of the law or clarify doubtful questions and eliminate duplications as well as obsolete or unnecessary clauses.

The Commission was greatly aided by a number of recommendations submitted to it upon its request by the Industrial Commission. As a result it proposes the following changes in either content or draftsmanship of Minn. Stats.

(1949) Ch. 176; as amended by Minn. Laws 1951 c. 457, 463 and 670:

(1) Elimination of the qualifying clause "by accident" and its legal definition from the Act.

The function of workmen's compensation is the provision of benefits for disabled workers or their dependents, if disablement or death is caused by a personal injury rationally attributable to the employment. The requisite connection of the personal injury with the employment is sufficiently indicated either by the traditional clause "arising out of and in the course of the employment" or by the statutory definition of the "occupational disease."

The use of the phrase "by accident" is nothing but the remnant of by-gone days when occupational diseases were outside the purview of the Act. Today the course of the decisions of the Supreme Court of this state and other jurisdictions shows that the clause "by accident" has long lost any practical significance and that the words in question have at best a nuisance value.

The elimination of the words "caused by accident" and their definition from the statute would not markedly broaden the scope of the statutory protection but merely help to rid the law of meaningless and confusing restrictions. Other states have long taken this course. The most recent example is Rhode Island and in Michigan similar action is contemplated.[1] The Commission is convinced that compensable harm is sufficiently identified and delimited by the terms "personal injury arising out of and in the course of the employment, including personal injury caused by occupational disease" as defined by the Act. It recommends therefore: (a) to strike §176.01 Subd. 9 from the statute; (b) to amend §176.02 by striking out the words "caused by accident"; (c) to amend §176.12 Subd. 18 by substituting "from a personal injury" for the words "caused by accident": (d) to amend §176.13(c)(1) by substituting "a personal injury" for "an accident"; (e) to amend §176.05 by striking "by an accident".

[1]See Riesenfeld, Forty Years of Workmen's Compensation, 35 Minn. L. Rev. 525.539 (1951).

(2) **Redrafting of §§176.02 and 176.05,** to be numbered §§176.02, 176.04, 176.05. The pivotal sections regulating the scope and character of the coverage of the Act are §§176.02 and 176.05. These sections are cluttered up with obsolete clauses and special qualifications which confuse the ordinary reader. In addition to a correction required by the phraseology of the Federal Employer's Liability Act with respect to railroads, it is proposed to simplify and rearrange these sections without change of meaning. It is proposed to redraft these two sections so as to read:

§176.02 *Coverage.* All employers and employees except those excluded by sections 176.04 and 176.05 shall be subject to the provisions of this chapter and every such employer shall be liable for compensation according to the schedules set forth and pay such compensation in every case of personal injury of his employee arising out of and in the course of the employment without regard to the question of negligence, except injury or death which is intentionally self-inflicted or when the intoxication of such employee is the natural or proximate cause of the injury, the burden of proof of such facts being upon the employer.

It is hereby made the duty of all employers to commence payment of compensation at the time and in the manner prescribed by this chapter without the necessity of any agreement or order of the Industrial Commission. Such payments, except those of medical, burial and other non-periodic benefits, shall be made at the intervals when the wage was payable or as nearly as may be. No agreement by any employee or dependent, whether made before or after the injury or death, to take as compensation an amount less than that prescribed by law shall be valid.

The liability herein imposed upon the employer shall extend to and bind those conducting the employer's business during insolvency, an assignment for the benefit of creditors and, in so far as agreeable with the controlling federal law, during bankruptcy.

§176.04 *Exemptions.* This chapter shall not be construed or held to apply to any common carrier by railroad engaged in interstate or foreign commerce, domestic servants, farm laborers or persons whose

employment at the time of the injury is casual and not in the usual course of the trade, business, profession or occupation of his employer. Professional baseball players under contract for hire which contract gives compensation equal to or greater than that provided by this chapter shall not be subject to this chapter provided the professional baseball club and the professional baseball player file with the Industrial Commission a written consent signed by both parties not to be bound by the workmen's compensation law and the same *be* approved by the Industrial Commission.

§176.05 *Voluntary Coverage.* An employer of farm laborers or domestics may assume the liability for compensation imposed by this chapter and the purchase and acceptance of such employer of a valid insurance policy which shall include in its coverage a classification of farm laborers or domestics, shall constitute as to such employer an assumption by him of such liability without any further act on his part, and such assumption of liability shall take effect and continue from the effective date of such policy and as long only as such policy remains in force. If during the life of any such insurance policy an employee who is a farm laborer or domestic shall suffer personal injury or death arising out of and in the course of his employment the exclusive remedy of such employee or his dependents shall be under this chapter.

(3) **Consolidation of §§176.03 and 176.24 into one section numbered** §176.24. Obviously §176.03 and §176.24 are duplicating each other. §176.03 is the controlling version; hence it should replace §176.24 Subd. 1 in the present form and thereby become the new §176.24 Subd. 1.

(4) **Renumbering and partly redrafting §176.04.** §176.04 should take the place of §176.03 which is proposed to be transferred to §176.24. (§176.05 should be numbered §176.04 and the new §176.05 drafted under (2) inserted.)

The introductory clause of the old §176.04 (now to be §176.03) should be amended to read:
§176.03 *Liability of Employer Exclusive.* The liability of an employer prescribed in this chapter shall be exclusive and. . . .

(5) Amending and rearranging §176.01.

The definitions section has become disarranged in the course of time and some of its subdivisions are in need of amendment. The alphabetical order of the definitions should be restored. Hence the following changes are required:

(a) Redefining *"compensation"*. (Subd. 2).

The present version of the definition of compensation stems the days when it was believed to be important to differentiate sharply between "indemnity" benefits and "medical benefits". The purpose of most acts was to induce the employer to pay medical benefits promptly and without fear of an estoppel against later denying any liability arising from the payment of such benefits. Hence it was believed that medical benefits ought not to be termed "compensation".[2] Minn. Stats. 1949 §176.02 speaking of "compensation, medical and other benefits" is indicative of this use of the terminology. However the Supreme Court of Minnesota has interpreted §176.01 Subd. 2 in a long line of cases (reconfirmed recently in Frank v. Anderson Bros. (1952) 236 Minn. 81, 51 N. W. 2nd 805) to the effect that compensation includes the right to payment of or reimbursement for medical expenses. It is therefore recommended that the definition be changed so as to clearly indicate this interpretation and read:

Subd. 2. *Compensation.* The word compensation includes all benefits provided by this chapter on account of injury or death.

It may be noted that the Industrial Commission in suggesting this amendment has intimated that an amendment such as proposed would automatically make the payment of medical benefits equivalent to a commencement of a "proceedings" for the purpose of tolling the statute of limitations. The Interim Commission cannot accept this view because it seems to be contra to the opinions by the Supreme Court in Lunser v. Buth (1935) 195 Minn. 29, 261 N. Y. 477, Mattson v. Oliver Iron Mining Co. (1937) 201 Minn. 35, 275 N. W. 403 and Mohrland v. Lampland Lumber Co. (1946) 222 Minn. 58, 23 N. W. 2d. 172. If such payment is to be considered as to toll the statute of

[2]See Riesenfeld, Modern Social Legislation, 294, 336.

limitations for original claims, §176.18 must be amended to that effect, see *infra.*

(b) *Amendment of the definition of Employer.* (Subd. 5).

It is proposed to strike the words "and to whom the employer directly pays wages". It is believed that this clause is redundant, unnecessarily restrictive and in conflict with a proposed amendment of the term wages.

(c) *Elimination of the definition of Accident.* (Subd. 9)

It has already been proposed to eliminate the clause "by accident" and the corresponding definition. It is proposed to insert in its place a new introductory clause into the definition of "personal injuries arising out of and in the course of employment" (Subd. 11).

(d) *Amendment of the definition of "Personal injuries arising out of and in the course of employment.* (Subd. 11).

Because of the elimination of the definition of accident it is recommended to insert into the definition of "Personal injuries arising out of and in the course of employment" the following introductory clause:

"Personal injury arising out of and in the course of the employment shall include personal injury caused by occupational disease as defined in this section."

The following text of this subsection shall further be changed so as to strike the word "abridged" and all words following the word "transported". The portion of the definition so eliminated is a useless attempt to restate principles evolved by judicial interpretation of the clause in question in respect to compensable and non-compensable assults. It seems preferable to leave this matter to the courts. Subd. 11 should therefore read:

Personal injury arising out of and in the course of employment.

Personal injury arising out of and in the course of employment shall include personal injury

caused by occupational disease as defined in this section. Without otherwise affecting either the meaning or interpretation of the phrase "personal injury arising out of and in the course of employment" it is hereby declared: Not to cover an employee except while engaged in, on, or about the premises where his services require his presence as a part of such service, at the time of the injury and during the hours of such service. Where the employer regularly furnishes transportation to his employees to and from the place of employment such employees shall be held to be subject to this chapter while being so transported.

(e) Redefining *"Occupational disease"* (Subd. 15 and Subd. 16)

The present definition of the term occupational disease is redundant. It is proposed that all parts of the definition following the words "occupational disease hazard" be eliminated. Subd. 16 should cease to be an independent subdivision and become a separate paragraph of subd. 15.

(f) Redefining *Member* (Subd. 10)

It is necessary to include the back into the definition of a member in view of §176.11 Subd. 3 (43) and §176.13. Thence §176 Subd. 10 should be amended to read:

"Member" as an anatomy term in this chapter includes back, eye and ear, as well as leg, foot, toe, hand, finger, thumb and arm.

(g) Redefining *Daily wage* (Subd. 14)

The Industrial Commission has suggested a clarification of the definition of daily wage for part-time employees and the inclusion of tips among the wage.

It is proposed to conform the regulation of tips to that adopted by the Federal agencies for the purpose of computing employment taxes under the Internal Revenue Code and old-age and survivor benefits under the Social Security Act, 20 C.F.R. 1949, Cum. Supp. 1951, §404, 1027 (k) (3) and 26 C.F.R. 1949, Cum. Supp. 1951, §408, 227 (k) (3). Hence it should be provided that wage "does not include tips or gratuities paid directly to an employee by a customer of an employer and not accounted for by the employee to the employer".

It is believed that the definition of part time employment in the statute is sufficiently clear to indicate the legislative intent and that specific applications should be worked out from case to case, following the principles laid down by the Supreme Court in Lee v. Villard Cons. School Distr. No. 5, 192 Minn. 449 and French v. Great Atlantic & Pacific Tea Co., 208 Minn. 9.

Consequently it is proposed to amend §176.01 Subd. 14 by rewriting the first sentence as follows:

"Daily wage" means the daily wage of the employee in the employment in which he was engaged at the time of the injury but does not include tips and gratuities paid directly to an employee by a customer of the employer and not accounted for by the employee to the employer. If at the time of the injury the employee is working on part time for the day, his daily wage shall be arrived at by dividing the amount received or to be received for such part time service and multiplying the result by the number of hours of the normal working day for the employment involved.

(h) *Replacement of "workman" by worker* (Subd. 7)

The term "worker" should be used instead of the obsolete expression "workman" in this section and any other section of the text.

(i) Rearrangement of the subdivisions in alphabetical order. The subdivision ought to be rearranged in the following alphabetical order: Subd. 2. Child, children; Subd. 3. Compensation; Subd. 4. Daily wage; Subd. 5. Employee; Subd. 6. Employer; Subd. 7. Executive Officer of a Corporation; Subd. 8. Farm laborers, commercial thresherman and commercial balers; Subd. 9. Husband, widower; Subd. 10. Industrial commission, commission, commissioner; Subd. 11. Member; Subd. 12. Occupational disease; Subd. 13. Personal injury arising out of and in the course of employment; Subd. 14. Worker.

(6) Eliminating § 176.08

Section 176.08 is now obsolete and should be eliminated. The Industrial Commission has suggested enacting specific rules regarding the applicability of the Minnesota compensation law to extra-territorial injuries suffered by an employee in "Minnesota" employment. However, it is believed that Minnesota should not follow the example of other states and specify the conditions under which services rendered outside the state are Minnesota employment. The case law developed by the Supreme Court should be left undisturbed.

(7) Amending §176.11 (Benefit schedule)

The benefit schedule contained in §176.11 needs a series of amendments both as to content and draftsmanship.

The Commission has already recommended in this report that the following changes ought to be made:

(a) Provision for disability benefits in case of total permanent disability for the whole period of disability for the whole period of disability, by amending §176.11 Subd. 4 to that effect;

(b) Provision for additional benefits for wholly dependent children in excess of three, by inserting into §176.11 a new Subdivision 5 to that effect and renumbering the present Subd. 5 as Subd. 6 and the following subdivisions accordingly.

(c) Provision for more liberal rehabilitation benefits, by amending §176.11 Subd. 3(43) appropriately.

In addition the Commission recommends the following further changes:

(a) *Increase of the duration of benefits for temporary partial disability in case of unemployment from 300 to 310 weeks (§176.11 Subd. 2)*

The present statute limits the duration of compensation for a worker who has suffered temporary partial disability but not succeeded in finding a job to 300 weeks. This limit should be extended to 310 weeks to conform with the first part of Subd. 2 and also with Subd. 3(44).

(b) *Increase of the period of compensation in case of loss of both arms (§176.11 Subd. 3(28)) and of loss of one arm and one leg (Subd. 3(37))*

The statute sets the compensation for the loss of one arm at a period of 230 weeks (Subd. 3(14) (Subd. 3(19)) and for the loss of one leg at the hip at a period of 220 weeks. The general policy of the schedule is to set the compensation for the simultaneous loss of two members at a period greater than, or at least equal to, the sum of the periods specified for the loss of each member involved. Such has been the law of Minnesota since Minnesota Laws 1915 c. 209 §13 which introduced special schedules for simultaneous loss of two members. The present discrepancy arose in 1951 when the amendment of the benefit schedule increased the benefit period for the loss of an arm from 200 to 230 weeks, i. e., by more than 10 per cent, while the benefit periods for the loss of a leg at the hip, for the combined loss of both arms, and for the combined loss of a leg and an arm were each increased only by 10 per cent. The 1951 amendment thus disturbed a balance which has existed in the Minnesota schedule since Minnesota laws 1921 c. 82 §14. It is therefore proposed to raise the duration of benefits for the loss of both arms (28) to 460 weeks and for the loss of one leg and one arm (37) to 450 weeks.

(c) *Reform of the law pertaining to eye injuries.*

The law providing compensation for eye injuries requires special attention and reform. When there is a loss of one or both eyes the provisions of the law are perfectly clear and easy to apply, see §176.11 Subd. 3(21) and §176.11 Subd. 5. The statute is likewise explicit where the permanent loss of the sight in one or both eyes is in question, §176.11 Subd. 3(40). But the state of the law is either unsatisfactory or dubious, where the injury caused the partial loss of the use of one or both eyes or the total loss or loss of use of one eye coupled with impairment of the sight in the other eye.

(1) As far as the partial loss of the use of one eye is concerned the dissatisfaction concerns mainly the choice of the criteria by which the extent of the visual impairment is measured.

The practice followed at present in Minnesota has been bitterly attacked during the hearings held by the Commission whereas the rules for determining loss of visual efficiency promulgated by the Industrial Commission of Wisconsin have been marked as a shining example for a sounder approach. It is therefore recommended that the Industrial Commission shall have the power and duty to make and revise rules for determining the extent of the industrial use of one or both eyes after consultation with proper experts in the field and after public notice to and hearing of the interested parties.

(2) Additional difficulties arise when the same occurrence causes an impairment of the vision in both eyes or the total loss of vision in one and a partial loss of vision in the other eye. Certainly the injured worker is entitled to the sum of the benefits provided for each separate eye injury. Minn. Stats. 1941 §176.11 Subd. 3(39) relating to concurrent injuries to two or more members permits such additional specifically. However, the question arises whether the injured worker is or ought to be entitled to larger benefits, since the statute considers the total loss of the use of two members in some instances as worthy of compensation exceeding that of the sum of benefits provided for the loss of each member. The Supreme Court of Minnesota has taken this view with respect to eye injuries and held in Finkon v. Melrose Granite Co., 143 Minn. 397. 173 N. W. 857 (1919) that a worker suffering the total loss of the use of one eye and an impairment of the vision of the other was entitled to an award exceeding that of the sum of benefits computed for each eye separately, by applying the general partial disability provision of the statute (now §176.11 Subd. 3(44)) to such case. It must be noted, however, that in the particular case the worker was actually unemployed and that only for that reason the application of the section in question resulted in higher benefits to the worker. If the injured worker returns to the labor market and earns wages the applicability of the general partial disability section and the inapplicability of the individual schedules may work grave injustice and deprive the worker of benefit amounts which he would receive if compensation were determined by applying the schedule for each eye injury without regard to the actual earning capacity.

It seems therefore equitable and necessary to provide *specifically* for the case of concurrent injuries to both eyes creating less than total disability and to prescribe that the compensation in such case shall be the prescribed rate during that part of 400 weeks which the extent of the combined injury bears to the complete loss of industrial vision. The choice of 400 weeks is based on the assumption that short of cases of total disability the effect of one eye injury is tripled by the fact that it is accompanied by injury to the other eye, a theory followed, for instance, also by Wisconsin Stats. 1949 §102.53. The new provisions relating to eye injuries should be inserted into §176.11 Subd. 3(41) in conjunction with other amendments now to be discussed.

(d) *Amendment of §176.11 Subd. 3(41) so as to provide for cases in which the injury impairs simultaneously two members without causing the total loss of use of at least one of them.*

§176 Subd. 3(41) specifies the compensation for partial disability due to an injury to a member resulting in less than total loss or total loss of the use thereof. It fails to regulate explicitly the case where a simultaneous injury occurs to two members but causing less than total loss or loss of use of one of them although the total loss of both members is treated by the schedule as a *separate* category. This causes inconsistency in the schedule and should be remedied although the law has been in this state since 1915. A provision analogous to that proposed for the case of the injury to both eyes should be inserted and §176.11 Subd. 3(41) should therefore be amended to read:

"The cases of permanent partial disability due to injury to a member resulting in less than total loss of such member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the

schedule for the total loss of the respective member which the extent of injury to the member bears to its total loss. In cases of permanent partial disability due to injury to two members resulting in less than total loss or loss of use of both or either of such members compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of both of the respective members which the extent of the combined injury to such members bears to their total loss. In cases of partial disability due to injury to both eyes resulting in less than total loss of vision in one or both eyes compensation shall be paid at the prescribed rate during that part of 400 weeks which the extent of the combined injury to both eyes bears to the complete loss of industrial vision.

"The Industrial Commission shall have the duty and power to make or revise rules for the determination of the extent of the impairment of the industrial use of one or both eyes taking into account all primary coordinate factors of vision. Such rules shall be made or revised after consultation with experts on industrial vision and after public notice to and hearing of the interested parties."

(e) *Amending §176.11 Subd. 3(40) by eliminating the clause referring to all other compensation in such cases, except as otherwise provided by this section.*

Because of the inclusion of medical benefits in the definition of compensation, it is believed that the retention of the clause beginning with the words "but the compensation" and ending with "by this section" should be stricken as superfluous and misleading.

(f) *Other amendments in draftsmanship.*

It is recommended to renumber the schedule portions in subd. 3 so as to avoid fractional numbers (such as 38½) and to replace the word "workman" in Subd. 2, Subd. 3, Subd. 3(40), and Subd. 3(43) with the word "worker" as recommended before.

(8) **Amending the provision relating to medical and surgical treatment.** (§176.15)

The limitation of the employee's right to medical and surgical care to the period of disability subject

to the possibility of an order of extension if so required appears to be an unnecessary obstacle to his recovery. Since the employee is entitled to all medical services required as a result of the injury and since the Commission has continuing jurisdiction over compensation proceedings, no special procedural steps should be required by the statute. It is therefore recommended to replace the words "during the disability" by the words *"and any time thereafter"* and to strike the two last sentences of the first paragraph beginning with the words "Upon request" and ending with the words "such order".

The decision of the Supreme Court in Graf v. Montgomery Ward & Co., 234 Minn. 485, 49 N. W. 2d 797, denied an injured employee recovery for nursing services rendered by his wife. In the case it was clear that without the aid of the wife outside professional services would have been required. The court denied recovery solely because of the statutory language. It is therefore recommended to add after the words "in providing the same" the words *"or for the reasonable value thereof if the same are provided by a qualified member of the employee's family."* Under the proposed amendment the employer would thus be liable only if he is unable or fails to furnish the necessary services.

The Industrial Commission has complained of the difficulties arising in the administration of the statutory rules relating to the change of the physician. The Interim Commission recommends to leave this matter to the rule-making power of the Industrial Commission and to amend §176.15 par. 2 as follows:

> "The Commission shall make the necessary rules for a change of physicians in the case that either the employee or the employer desire a change and for the designation of a physician suggested by the injured employee or the Commission itself. In such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section and for medical and surgical treatment and attendance.

(9) Strengthening the statutory provisions against non-insurance by amending §§ 176.24 and 176.25.

One of the most important aspects of the Minnesota compensation law is its provisions assuring to the injured worker the payment of the benefits to which he is entitled. For that purpose private employers must carry compensation insurance with certain prescribed terms and conditions. Violation of this duty produces certain sanctions. The statutory provisions on this subject need certain revisions. These revisions concern (a) the insertion of a cancellation clause, preventing lapse of insurance protection, (b) strengthening the sanctions against non-insurance, (following partially the model of Wisconsin), (c) rearrangement of the content of the pertinent sections.

It has already been pointed out that the present §176.03 and §176.24 duplicate each other and that §176.03 actually is the controlling text and should take the place of the present §176.24, Subd.

(a) It is now recommended to transfer the first sentence of §176.25 to §176.24 as Subd. 1, and to renumber the present §176.03 as §176.24, Subd. 2. The first part of §176.24 should therefore read:

§176.24. *Right and duty of employer to insure employees—Exceptions.* Subd. 1. Any employer who is responsible for compensation may insure the risk *in any manner authorized* by law. Subd. 2 Every employer, except the state . . . may be enforced. (test identical with present §176.03)

(b) The present Subd. 2 should become Subd. 3 and be amended to read:

Subd. 3. Any employer who fails to comply with the provisions of subdivision 2 to secure payment of compensation shall be liable to the State of Minnesota for a penalty of $50, *if the number of uninsured employees in his employment is less than 5 and for a penalty of $200 if the number of such uninsured employees in his employment is 5 or more.* If the employer continues his non-compliance he shall be liable in addition to such penalty for five times *the lawful premium for compensation insurance for such employer* for the period he fails to comply with such provisions, commencing ten days after notice has been served upon such employer by the commission in the manner provided for the service of the summons in civil actions. Such penalties may be recovered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the commission, whenever such failure occurs to immediately certify the fact thereof to the attorney general, and upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury, to be credited to the special compensation fund. *If an employer fails to comply with the provisions of subdivision 2 to secure payment of compensation after having been notified of his duty the attorney general, upon request of the industrial commission, may proceed against such employer in any court having jurisdiction of such action to obtain an order restraining him from having any person in his employment at any time when he is not complying with said subdivision.*

(c) The present subdivision 3 shall be renumbered as Subd. 4.

(d) §176.25 should embody the new cancellation provision and read:

§ 176.25 Compensation insurance policies, cancellation and conditions.

Subd. 1. A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state may be cancelled at any time upon written notice to the insured stating when, not less than 30 days thereafter, cancellation shall be effective. Such notice of cancellation shall be served upon the insured by written statement to that effect mailed by registered return receipt mail to the insured at the address indicated in the policy and by

mailing a copy thereof to the main office of the Industrial Commission. Upon receipt of said copy the commission shall notify the insured that he must obtain coverage from some other licensed carrier and that, if unable to do so, he shall request the Compensation Rating Bureau to designate some carrier to issue a policy as provided in §79.25. Upon a cancellation of a policy by the insurer the insured shall be entitled to have a policy assigned to him in accordance with §79.24-29.27 Notice of cancellation by the insured shall be served upon the insurer by written statement to that effect mailed to the insurer at its home address stated in the policy. Upon receipt of such notice the insurer shall notify the commission of such cancellation and thereupon the commission shall ask the employer for the reasons of his cancellation and notify him of his duty under this chapter to insure his employes. When either party has complied with the provisions herein as to cancellation the effective date of cancellation stated in the notice shall be the end of the policy period. Subd. 2. A policy of insurance covering the liability to pay compensation under this chapter written by any insurer licensed to insure such liability in this state shall in every case be subject to the conditions of this section hereinafter named.

If the risk . . . (incorporating all of §176.25 following the words "if the risk")

(10) Amendment of the provisions relating to supplementary compensation, payments out of the special compensation fund and to the financing thereof.

(a) Minn. laws, 1951 c. 457 §7 repealed §176.13 (c). Minn. laws 1951 c. 670 reinstated additional compensation payments to widows with dependent children and orphans then receiving death benefits limited to $7500. It is believed that the class of persons entitled to such additional benefits is too narrowly circumscribed and that certain other meritorous cases should be included. It is therefore recommended to amend this section so as to read:

"Widows with a dependent child or children, or with a child or children over 18 years of age physically or mentally incapable from earning, and all such children who are orphans *who are entitled to receive compensation under §176.12 for the death of their husband or parent occurred prior to July 1st, 1951, shall after the maximum collectible compensation has been paid* and satisfactory proof thereof filed receive additional compensation, not exceeding $2500 from the special state fund provided for by Section 176.13 subject to the limitations prescribed by said section before its amendment by Minn. laws, 1951, c. 457 §7."

(b) The financing of the second injury fund needs overhauling. There seems to be little reason why the fund shall receive payments in case of the so-called schedule injuries and not in other cases. Since the schedules for loss of members are predicated on the idea of a standardized loss of earning power no justification for singling out these cases to finance the fund seems to be apparent. It seems to be preferable to finance the fund by a special exaction from all insurance carriers and self-insurers. The latter ought to be liable for an amount which corresponds to an equal percentage of the manual rate applicable to their operations.

It is therefore proposed to strike out in §176.13 all parts following the sentence "This fund shall be created for such purposes in the following manner" and replace them by the following words:

(1) "Every insurance carrier licensed to write compensation insurance in this state shall pay to the state treasurer annually an amount equal to .0875 percent of the premiums collected by it during the preceding calendar year for insurance against liability under this chapter, to be credited to the special compensation fund. Every employer exempted from the duty of insuring his liability under this chapter pursuant to §176.24 shall pay annually to the industrial commission an amount which corresponds to .0875 percent of the annual rate applicable to their operations during the preceding calendar

year. The industrial commission shall deposit the amounts so collected with the state treasurer for the benefit of the special compensation fund.

(2) In every case of death of an employee resulting from a personal injury arising out of and in the course of the employment where there are no persons entitled to compensation the employer shall pay to the industrial commission the sum of $300. The industrial commission shall deposit the amounts collected under this section with the state treasurer for the benefit of the special compensation fund. The state treasurer shall be the custodian of this special fund and credit to it all penalties collected for violation of any of the provisions of this chapter. The industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit has been made under the provisions of clause (2) of this section and dependency is later shown or if deposit has been made pursuant to either clause (1) or (2) by mistake or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission.

(11) Amendment of § 176.19(2) relating to medical examinations.

Upon suggestion by the Industrial Commission it is recommended to strike out the first sentence of §176.19.2 and insert in its place:

"(2) In case of dispute as to the injury, the industrial commission, or in case of a hearing the commissioner or referee conducting the hearing may upon its own or his own motion, or upon request of any interested party, *made in compliance with the rules issued by the Industrial Commission regulating the proper time and form for such request,* designate a neutral physician of good standing and ability to make an examination of the injured worker and report his findings to the commission, a commissioner or referee as the case may be. *The industrial commission, a commissioner or referee as the case may be, may request the neutral physician to answer any particular question with reference to the medical phases of the case, including questions calling for an opinion as to the cause and occurrence of the injury insofar as medical knowledge is relevant in such answer."*

(12) Authorization for the destruction of interim receipts.

Upon suggestion by the Industrial Commission it is recommended to add the following paragraph to §175.36:

(3) Interim compensation receipts filed in the division of workmen's compensation of the industrial commission after the same are audited and have served the purpose of the commission.

(13) Change of interest rate in payments to trustee. (§ 176.22)

It is recommended to change the present six percent basis to a five percent basis to conform with §176.21, by substituting the work "five" in lieu of "six".

(14) Amendment of the provisions relating to death benefits of partial dependents in death cases. (§ 176.12(17)).

The interim commission does not approve of the recommendation by the Industrial Commission for a lump sum payment of $2000 in certain such cases, made in its 31st Biennial Report, at p. 118 and its 32d Biennial Report, at p. 113. To alleviate the difficulties of proof in such cases it is recommended to amend §176.12(17) by adding the following provision: *"and if the amount regularly contributed by the deceased to such partial dependents cannot be ascertained because of the circumstances of the case the industrial commission shall make a fair and reasonable estimate thereof taking in account all pertinent factors of the case;*

V.

Topics not studied

Since modern compensation acts cover a vast and intricate field of human activities the interim commission could not investigate all areas in which further study is desirable. The questions which need further attention are especially the following ones:

1) Extension of the act to certain employments of a public or private character which are still excluded.

2) Operation of the occupational disease law and its relation to the law relating to the care and treatment of tubercular public employees.

3) Liability of third parties and subrogation to third party claims by the employer or insurance carrier.

4) Attorney's fees and reinbursement therefor.

It is therefore recommended that the legislation re-appoint another interim commission for the completion of the present study, especially in the indicated fields.

Respectfully submitted,

Alf. L. Bergerud

E. J. Windmiller

D. D. Wozniak

C. C. Mitchell

Gerald T. Mullin

Milton C. Lightner
Chairman.