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Special Session of Legislature Called to Consider Legislation Relating to

Occupational Diseases, Health, Comfort and Safety and Changes in Blower Act

GOVERNOR HORNER has called a Third Special Session of the Illinois General Assembly which began Wednesday, February 6. This session will run concurrently with the first and second special sessions which now have been in progress for several weeks.

Items to be considered in this Third Special Session which are of importance to industry relate to bills providing for remedies in occupational disease situation; legislation relating to health, comfort and safety; and measures making certain changes in the Illinois Blower Act. A digest of the principal provisions of these several bills is subjoined. Copies of any or all of these measures will be sent to members upon request to our Chicago or Springfield offices. It has not been feasible for the Association to send copies of these measures to members at an earlier date because the bills were not in form for submission to the Illinois Legislative Reference Bureau at Springfield until late Tuesday evening, February 4th. As a matter of fact, it is probable that some changes will still be made by the Legislative Reference Bureau before the bills are finally submitted to the legislature. However, as indicated above, copies of the bills as submitted to the Legislative Reference Bureau will be sent to our members upon request.

These measures are the result of extended consideration of this entire subject matter by the Occupational Diseases Committee of the Association under the chairmanship of O. E. Mount. This committee was appointed by the President of the Association early in 1933 to study the occupational diseases problem with a view to determining what remedial legislation was necessary in the state to bring about an equitable and practical system governing the rights, duties and liabilities of employers, employees and insurance carriers with respect to such diseases. At the time the committee was appointed, employers in the state were being flooded with damage suits, most of which were predicated on silicosis, asbestosis, and a variety of real and fancied lung afflictions. Some of these suits were meritorious, but to a large extent they were stirred up and solicited by ambulance chasers for unethical lawyers who, with the aid of doctors of like ilk, developed what for a time was a flourishing racket. The unethical lawyers and doctors, and not the employees themselves, profited from these suits.

The committee has devoted its activities exclusively to the development of adequate and comprehensive occupational disease legislation for the state, and it has actively and conscientiously continued its efforts to this desirable end during the past year. It has had the whole-hearted cooperation of member companies of the Association, which companies have placed at the disposal of the committee the services of legal, medical, engineering and lay members of their organizations. It has also received the cooperation and assistance of a number of the most outstanding legal, medical and lay authorities on the subject of occupational diseases in this country.

Measures Carefully Studied

Careful study and consideration has been given to occupational diseases acts which have been enacted by various states in this country and by foreign countries; and in our study of these various acts especial efforts have been made to determine what has proven satisfactory in actual operation from the standpoint of both employers and employees.

As soon as the first draft of a proposed act was approved by the committee, a copy of such measure was delivered to the representatives of labor for their consideration. We hoped that an agreed bill might be developed and introduced at the 1935 regular session of the Illinois General Assembly. The representatives of labor, however, introduced their own bill, which action placed us under the necessity of introducing our bill. Both bills were referred to the House Judiciary Committee, and by that committee in turn to a special sub-committee. The sub-committee conducted many hearings. Shortly before the end of the regular session, the Illinois Director of Labor requested representatives of employers and labor to confer in an effort to develop an agreed bill. The widely divergent views of the two groups ren-

Legislative Situation at Springfield

There are now three special sessions of the Illinois General Assembly running concurrently. The first special session covers the subjects of old age pensions, unemployment insurance, etc. The second session relates to unemployment relief, and the third, which has just been called by the Governor, covers the subject of occupational disease legislation, and several other items which are not of direct importance to industry.

The status of the unemployment insurance legislation remains unchanged. An unsuccessful effort was made to pass this measure in the State Senate on January 7th. Insufficient votes were secured. Senator Lee, sponsor of the bill in the Senate, secured the consent of the Senate to postpone consideration of the bill. Therefore, he is in position where he can call the bill up at any time for reconsideration. A companion bill is on second reading in the House of Representatives. It is in position where it could be advanced at any time. The Association is carefully watching this legislation and will promptly advise its members in event any further efforts to enact the measures into law are made.

The subject of occupational disease legislation is treated elsewhere in this issue.

The Association is represented at Springfield at all sessions of the legislature by Allan T. Gordon, Director of our Legislative Bureau, and other members of our staff. Detailed information regarding any measures pending at Springfield can be secured by communicating with our Chicago or Springfield offices.

dered agreement impossible in the limited time available.

The bill finally reported to the House by the Judiciary Committee was considered basically unsound by this committee. We accordingly opposed its enactment and, fortunately for Illinois industry, it failed of passage.

The situation with respect to the liability of employers for occupational diseases has undergone radical change during the past year. The decision of the Supreme Court in April, 1935, holding portions of the existing Occupational Diseases Act unconstitutional, and the subsequent decision of the Appellate Court in July, 1935, holding that no common law right of action exists in this state for occupational diseases, stopped the flood of damage suits against employers. As a result of these decisions hundreds of silicosis claims have been filed with the Industrial Commission on the theory that under further court decisions such claims would be held compensable under the existing law. No one is in position to predict with certainty the outcome of these claims. The situation, therefore, remains chaotic. No intelligent person considers that such a situation will be permitted to continue. Constitutional laws providing a logical solution can, will, and should be enacted. Unconstitutional laws should and must be eliminated.

The governor, recognizing the widespread interest and gravity of the situation, in the early part of September, 1935, arranged for a conference of representatives of labor and employers under the chairmanship of Hon. Peter J. Angsten, chairman of the Illinois Industrial Commission. This conference was called by the governor for the purpose of endeavoring to develop agreed legislation providing for the prevention of, and compensation for, occupational diseases.

Ever since the Workmen's Compensation Act was placed on the Illinois Statute Books in 1912, it has been customary for representatives of labor and industry to undertake to agree to such amendments in said act as seemed necessary or expedient for consideration at succeeding sessions of the legislature. These joint conferences through the years between representatives of labor and industry on the subject of proposed changes in the Workmen's Compensation Act were ordinarily initiated by the Illinois Industrial Commission. Accordingly, pursuant to such custom the Occupational Diseases Committee of the Association when it had completed the first draft of a proposed bill recommending changes in the law relating to that subject matter submitted a copy of such measure to representatives of labor for their consideration. This was done early in 1935, shortly after the Illinois General Assembly had convened in regular session. This action was taken with the hope that an agreed bill might be worked out and enacted at the said regular session. The representatives of labor, however, introduced their own bill bringing all so-called occupational diseases under the Workmen's Compensation Act under what was commonly referred to as the "Wide-open" clause. There was no definition of what constituted an occupational disease. If such a measure had been enacted into law, Illinois employers would have been obligated for claims for so-called occupational diseases which were not in fact related to employment. We would have had a recurrence of conditions which existed in New York State, where, under a law enacted there comparable to the so-called "wide-open" proposal just referred to, many New York employers were obliged to close down their plants and many others were unable to secure insurance except at prohibitive rates.

The Illinois Manufacturers' Association was, therefore, obliged to introduce its own occupational diseases bill. Both measures, i.e., the so-called "wide-open" bill, sponsored by organized labor, and the measure sponsored by our Occupational Diseases Committee were referred to the Judiciary Committee of the House of Representatives and by that committee to a sub-committee.

The committee has had a large number of meetings. In fact the committee has met almost continuously since the date upon which it was called together by the Industrial Commission in September of last year. As indicated above, the bills were not in final form for submission to the Legislative Reference Bureau until the night of Tuesday, February 4th.

The decision of the Supreme Court of Illinois holding portions of the Occupational Diseases Act unconstitutional in effect invalidated the principal features of the Illinois Act pertaining to rules and regulations providing for "Health, Safety and Comfort" in Illinois industry. The proposed legislation relating to that subject, which is a part of this program and a digest of which is subjoined, represents the conclusions of the committee as the most practicable and least objectionable plan that is available under all existing circumstances.

The changes in the Blower Act, which are also contemplated by this series of bills, are the result of extensive study by a group of engineers identified with representative member firms. It was the conviction of the members of that group that the present laws relating to that subject are indefinite and involved and could not, in many instances, be conformed to in practical operation. This proposed measure relating to this subject is intended to more clearly define the rights and liabilities of employers in connection with this subject matter, pending further treatment of this subject by the Industrial Commission pursuant to the authority given to the Commission under the terms of the Health, Comfort and Safety Act.

As indicated above, the various measures included in this proposed legislation are the result of extended consideration of our Occupational Diseases Committee over a period of several years. In this activity we have had the assistance of all of the other principal employing groups in Illinois, all of whom we are informed are in sympathy with and have endorsed this program.

This legislative program has also received the careful consideration of the Illinois Industrial Council and our Board of Directors and has the unanimous approval of both of those groups. We shall be glad to undertake to answer inquiries from our members regarding any features of this program upon which they desire additional information.

Digest of Bills

The following is a brief digest of the five Bills:

1. The first Bill is for a Workmen's Occupational Diseases Act.

This is a Bill covering the subject of liability of employers for injuries or deaths resulting from diseases. It provides for an elective compensation liability, with a liability for damages imposed on non-electors.

Section 3 of the Bill provides for liability for damages to an employe who has sustained injury to health, or death, by reason of a disease contracted or sustained during the course of his employment and proximately caused by the negligence of the employer, unless the employer shall have elected to pay compensation as provided in Section 4 of this Bill. In connection with the liability for damages of non-electing employers, the Bill provides that the violation by any employer of any effective rule or rules made by the Industrial Commission pursuant to the Health and Safety Act, or the violation by the employer of any statute of this State intended for the protection of the health of employes, shall constitute negligence. This Section further provides for the period in which actions for damages must be commenced and removes the common law defenses of the employer.

Section 4 provides that any employer may elect to provide and pay compensation according to the provisions of this Bill for disablement or death resulting from occupational diseases. The Bill provides for the method of making the election, and further provides, that employers electing may have the right to elect out from under the Act on October 1st, 1937, and on each October 1st for four years thereafter, providing, however, that an employer who has elected to come under the compensation provisions of the Act, then has elected not to be under them, and has subsequently elected again to come under the Act, shall not have the right to any further elections.

The employes of any employer who has elected to be bound by the compensation provisions of the Act have the right not to be so bound. Unless an employe files notice to the contrary within thirty (30) days after the election by the employer, he shall be deemed to have accepted the compensation provisions of the Act.

The Bill defines an occupational disease as follows:

> "Section 6. In this Act the term 'Occupational Disease' means a disease arising out of and in the course of the employment. Ordinary diseases of life to which the general public is exposed outside of the employment shall not be compensable, except where the said diseases follow as an incident of an occupational disease as defined in this section.
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> "A disease shall be deemed to

arise out of the employment, only if there is apparent to the rational mind upon consideration of all the circumstances, a direct causal connection between the conditions under which the work is performed and the occupational disease, and which can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment and which can be fairly traced to the employment as the proximate cause, and which does not come from a hazard to which workmen would have been equally exposed outside of the employment. The disease must be incidental to the character of the business and not independent of the relation of employer and employee. The disease need not to have been foreseen or expected but after its contraction it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a rational consequence."

The Bill defines disablement as follows:

"'Disablement' means the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he claims compensation, or equal wages in other suitable employment; and 'disability' means the state of being so incapacitated."

The Bill further provides that no compensation shall be payable for occupational diseases unless disablement occurs within one year after the last day of the last exposure to the hazards of the disease, except in cases of occupational diseases caused by the inhalation of silica dust or asbestos dust, and in such cases within three years after the last day of the last exposure.

The Bill further provides that the employer liable for compensation shall be the employer in whose employment the employe was last exposed to the hazard of the occupational disease claimed upon regardless of the length of time of such last exposure, except that in the cases of silicosis and asbestosis, the exposure during a period of less than sixty (60) days after the effective date of the Act shall not be deemed a last exposure.

The provisions relating to amounts of compensation, and to procedure are incorporated in the Bill in the same language, and by the same section numbers, as they are contained in the Illinois Workmen's Compensation Act.

The Bill, if enacted, shall take effect on October 1, 1936, and shall be administered by the Industrial Commission.

Health and Safety Bill

2. The second Bill is the Health and Safety Bill.

This Bill vests in the Industrial Commission the power to make reasonable rules to provide reasonable protection to the lives, health and safety of employes.

The power of the Industrial Commission to make rules is limited to the following purposes:

(a) The proper sanitation and ventilation of all places of employment to guard against personal injuries and diseases.

(b) The arrangement and guarding of machinery and the storing and placing of personal property to guard against personal injuries and diseases.

(c) The prevention of personal injuries and diseases by contact with any poisonous or deleterious materials, dusts, vapors, gases or fumes.

(d) The prevention of personal injuries and diseases caused by exposure to artificial atmospheric pressure.

Rules of the Industrial Commission adopted in the manner provided in the Bill shall have the force and effect of law.

This Bill would apply to all employers engaged in any occupation, business or enterprise in the State, except farmers and others engaged in farming, tillage of the soil, or stock raising, and to coal mining.

The rules adopted by the Industrial Commission must be clear, plain and intelligible, and must be uniform and general in their application.

The Bill provides that it shall not be construed as granting the Industrial Commission the power to make any rule which will require the submission of any plan, specifications, or other information concerning any proposed installation, alteration, construction, apparatus or equipment, or in any manner regulate the hours of labor of any employee in the State.

The Bill sets forth the procedure for the adoption of rules by the Industrial Commission.

The Commission may either institute proceedings on its own initiative by a resolution, or upon petition signed by five employes or five employers in a specified industry.

The Commission shall set a date for a public hearing not less than thirty days, nor more than ninety days, after the date of the passage of the resolution by the Commission, or the filing of the petition.

Notice of the hearing must be given at least thirty days prior to the date of hearing, by publication in a newspaper of general circulation and by mailing notice to any employer and to any association of employers or of employes who have filed their names and addresses with the Industrial Commission requesting notice of such hearings.

Any interested party may submit evidence at the hearing.

Upon the conclusion of the hearing, the Industrial Commission shall enter its decision in writing and send a copy of the decision to the interested parties whose names are on file with the Commission, and a certified copy of the decision shall be filed with the Secretary of State.

Within thirty days after the entry of the decision, the Industrial Commission may correct, modify or vacate the decision, rule or rules, and any person affected by the decision may object in writing, stating the specific grounds of his objection.

Any person affected by the decision, whether he participated in the proceedings or not, may file a praecipe for a writ of certiorari in the Circuit or Superior Court of the County in which the subject-matter of the hearing is situated, for review of the reasonableness or lawfulness of the decision or rules.

The Circuit or Superior Court may confirm or reverse the decision of the Commission as a whole, or may reverse and remand it as a whole, or may confirm part and reverse and remand part of the decision.

An appeal from the order of the Circuit or Superior Court may be taken to the Supreme Court within forty-five days, except as to the portions of the decision which are remanded by the Circuit or Superior Court.

The Industrial Commission may fix the date that rules or decisions adopted by it shall become effective, provided that no such decision, rule or rules shall become effective until ninety days after entry by the Industrial Commission, nor shall they be effective during the pendency of any proceeding for review or appeal, and upon termination of appeal, no decision, rule or rules shall become effective until a period of time has elapsed after the filing of the Court's Mandate equal to the period of time originally fixed by the Commission.

The Industrial Commission is required to keep a full and complete record of all proceedings, and at least once a year shall publish in printed form all of the rules in full force and effect at the time of the publication.

The enforcement of the rules is vested in the Department of Labor, with the proviso that the Industrial Commission shall not take any part in their enforcement.

The Department of Labor is given power to inspect places of employment affected by rules, subject to a proviso that whenever any secret processes are used, the owner shall furnish an affidavit that he has complied with all effective rules, which affidavit shall be accepted in lieu of inspection.

The Bill provides that the Department of Labor shall give proper notice in regard to any violation of the Act, and any person who fails or neglects to comply with any rules adopted by the Commission after due notice is given, is guilty of a misdemeanor and subject to fine.

This Bill provides for repeal of the Health, Safety and Comfort Act, to take effect July 1, 1937, and for the repeal of Section 4 of the so-called Basement Blower law, to take effect October 1, 1936.

The Bill contains an emergency clause, and is intended to take effect immediately upon its passage.

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3. A Bill to amend Sections 7, 14, and 19 of the Workmen's Compensation Act.

The amendment to Section 7 is a result of the decision of the Supreme Court in the Moweaqua Coal Company case, 360 Ill. 194, and adds the following language to the section:

"Whenever four times the average annual earnings of the deceased employe as provided in paragraph (a) of this Section amounts to four thousand dollars and not more than four thousand four hundred dollars and the deceased employe left surviving him one child under the age of sixteen years the amount payable shall be four thousand four hundred dollars.

"Whenever four times the average annual earnings of the deceased employe as provided in paragraph (a) of this Section amounts to four thousand dollars and not more than four thousand seven hundred dollars and the deceased employe left surviving him two children under the age of sixteen years the amount payable shall be four thousand seven hundred dollars.

"Whenever four times the average annual earnings of the deceased employe as provided in paragraph (a) of this Section amounts to four thousand dollars and not more than five thousand dollars and the deceased employe left surviving him three or more children under the age of sixteen years the amount payable shall be five thousand dollars."

The amendment to Section 14 adds the words "or assistant secretary" in connection with certain duties conferred on the Secretary of the Commission.

The amendment to Section 19 is for the purpose of taking care of the situation which might arise where a claimant misconceives his remedy and files his claim under the Occupational Disease Act when he should have filed under the Compensation Act, or where he files under the Compensation Act when he should have filed under the Occupational Disease Act. The amendment provides that in such event the application may be amended to assert claim for disability or death under the proper Act, and shall be deemed to have been so filed as amended on the date of the original filing, and such compensation shall be awarded as is warranted by all of the evidence.

4. A Bill to amend Section 44 of the Act in relation to the Civil Administration of the State government to authorize the Department of Labor through the Industrial Commission to administer the Health and Safety Act and the Workmen's Occupational Diseases Act.

5. This is a Bill to compel the using of exhaust systems for removing dust and dirt from grinding, polishing and buffing operations, repealing the present Blower Law, and containing an emergency clause.

The Bill is to remain in effect until July 1st, 1937, by which time it is contemplated that the Industrial Commission will have adopted rules covering the subject-matter.

This is a Bill which was drawn by a Sub-Committee of the Occupational Diseases Committee of the Illinois Manufacturers' Association, and was introduced in the Legislature at the last General Session.

It was drawn by engineers, and contains detailed and scientific requirements to replace the present antiquated Blower Law.

Efficient Committee Service

The Members of the Occupational Diseases Committee of the Association and of the Illinois Industrial Council, which groups as indicated above represented the interests of our members in connection with the preparation of the above measures, are:

OCCUPATIONAL DISEASES

O. E. Mount, Chairman, American Steel Foundries.

L. K. Ayres, Vice-chairman, George S. Mepham Corp.

Members—General

J. R. Allen, International Harvester Co.

Donald Blake, Blake Monument Co.

E. Bernstein, Caterpillar Tractor Co.

Major R. A. Bull, Sivyer Steel Castings Co.

W. E. Crocombe, American Manganese Steel Co.

A. M. Davis, International Silica Co.

J. S. Dempsey, Buda Company.

F. H. Elam, American Steel Foundries.

Walter Evensen, Crane Co.

Andrew J. Percival, A. E. Staley Mfg. Co.

H. C. Thornton, Ottawa Silica Co.

R. E. McEwen, Western Electric Co.

A. Warsaw, Wedron Silica Co.

Members—Legal

David R. Clarke, Fyffe & Clarke, Attorneys.

J. L. Earlywine, Counsel, Illinois Steel Co.

A. C. Hirth, Counsel, Owens-Illinois Glass Co.

Members—Medical

Dr. J. A. Britton, Supervisor of Medical Service, International Harvester Co.

Dr. J. R. DeMotte, Chief Surgeon, Pullman-Standard Car Mfg. Co.

Dr. A. M. Harvey, Chief Surgeon, Crane Co.

Dr. J. H. Chivers, Personnel Director, Crane Co.

Dr. C. O. Sappington, Consulting Industrial Hygienist.

ILLINOIS INDUSTRIAL COUNCIL

Ross Bowles, President, East Side Associated Industries, East St. Louis, Ill.

J. L. Walker, Vice-President, Fox River Valley Manufacturers' Assn., Aurora, Ill.

L. E. Roark, Peoria Manufacturers' & Merchants Assn., Peoria, Ill.

M. H. Ward, Alton District Manufacturers' Assn., Alton, Ill.

Richard W. Gass, Acting Secy., Belleville Chamber of Commerce, Belleville, Ill.

R. I. Pierce, Mfrs.' Assn. of Chicago Heights, Chicago Heights, Ill.

Henry Bolz, Decatur Association of Commerce, Decatur, Ill.

M. H. Ward, East Side Manufacturers' Assn., Granite City, Ill.

R. W. Jones, Will County Manufacturers' Assn., Joliet, Ill.

N. J. Ziener, Mgr., Kankakee Chamber of Commerce, Kankakee, Ill.

O. M. Benson, Illinois Valley Manufacturers' Club, LaSalle, Ill.

E. C. Xander, Tri-City Mfrs.' Association, Moline, Ill.

C. S. Bather, Rockford Mfrs.' & Shippers' Assn., Rockford, Ill.

W. E. Long, Sterling Mfrs.' & Shippers' Assn., Sterling, Ill.

G. Robert Galloway, Chamber of Commerce of Waukegan, Waukegan, Ill., North Chicago, Ill.

C. L. Blatchford, National Metal Trades Association, Chicago, Ill.

H. D. Sayre, National Metal Trades Assn.

Allan T. Gordon, Springfield, Ill.

SUB-COMMITTEE MEMBERS

The members of the sub-committee, who, during the period of several months, carried on the negotiations and the detailed work associated with the drafting of the bills, are: O. E. Mount, Chairman; J. L. Earlywine, T. G. Essington, Walter E. Beebe, Dr. J. H. Chivers, Dr. C. O. Sappington and Mr. E. O. Jones.

Messrs. David R. Clarke and John Harrington of the firm of Fyffe and Clarke, General Counsel for the Association, also participated in the work of the sub-committee as well as Attorney Frank R. Peregrine, an authority upon Workmen's Compensation legislation who was retained as special counsel by the Occupational Diseases Committee to assist in the drafting of such measures.

This activity on behalf of the members of the Association has involved a very substantial expenditure of time, energy and funds. It is the conviction of all of those who have carefully followed the progress of the work that these groups have rendered a genuinely valuable service to the employers of Illinois.

South American Trade

Noah Van Cleef, of Van Cleef Bros., manufacturers of molded rubber products who recently returned from an extensive trip through South America for the purpose of extending the trade of his office, says that goods manufactured in the United States enjoy wide acceptance in South America. In many cases North American manufacturers have found it a decided sales advantage to ship their products bearing the same labels and markings as are used in their domestic transactions. The average South American considers the North American carton a trade mark or guarantee of excellence.

Mr. Van Cleef in an article in the Chicago Credit News pointed out that a handicap to the American exporter is the discrimination in the rate of exchange against the United States in favor of other nations.

The Interstate Commerce Commission has postponed a verdict in its study of passenger fares. Some ICC officials forecast that in the near future railroads will begin charging as little as 2 cents a mile for day coach and 3 cents a mile for Pullman coach rides.

How Corporation taxes fall on the investor is indicated by some pertinent data in the January issue of Investor America, published monthly by the American Federation of Investors, at Chicago.