

HERE'S THE ISSUE

Published every other week while Congress is in session by the Legislative Department, Chamber of Commerce of the United States, Washington, D. C. Subscriptions: \$2.50 per year to members of the National Chamber, \$3.50 per year to non-members. Rates for multiple subscriptions or bulk orders available on request. Material in this bulletin may be reproduced with or without credit. Editor: Wallace Davis.

PLAINTIFF'S EXHIBIT

ACS-339

The Occupational Health & Safety Act

Everyone in America is in favor of safety.

Yet accidents continue to happen. A workman removes a guard from a saw because it gets in his way — and loses a hand. A bulldozer overturns and kills its operator. Two teenagers decide to race down the highway in their cars.

Out of the 113,000 people who were killed in accidents in 1966 — the last year for which complete records are available — almost half, some 53,000 were killed in motor vehicle accidents. Another 29,000 were killed in accidents around the home.

About 14,500 were killed in accidents that were classified as "at work".

In his special Message on Manpower, the President outlined various proposals for expanding job training and a program designed to put the hard-core unemployed to work.

Grafted on to the end of this message was a proposal to attack the problem of industrial accidents through a new Federal Government program.

The President declared that 14,500 workers are killed on the job each year, that 2.2 million workers are injured, that 250 million man-days of productivity are wasted, and that the result is a loss of \$5 billion to the economy.

The reason for this accident and death toll is clear, the President implied: The Federal Government has not taken charge of industrial safety.

The reasons for these staggering losses are clear. Safety standards are narrow. Research lags behind. Enforcement programs are weak. Trained safety specialists fall far short of the need.

The Federal Government offers the worker today only a patchwork of obsolete and ineffective laws.

The major law — Walsh-Healey — was passed more than three decades ago. Its coverage is limited. It applies only to a worker performing a government contract. Last year about half of the work force was covered, and then only part of the time.

It is more honored in the breach than observed. Last year, investigations revealed a disturbing number of violations in the plants of government contractors.

Comprehensive protection under other Federal laws is restricted to about a million workers in specialized fields — longshoremen and miners, for example.

Only a few States have modern laws to protect the

worker's health and safety. Most have no coverage or laws that are weak and deficient.

The gap in worker protection is wide and glaring — and it must be closed by a strong and forceful new law.

Legislation (H.R. 14816, O'Hara, D-Mich. and S. 2864, Yarborough, D-Tex.) was hastily drafted and introduced, and hearings were hastily called in the Senate and the House.

Because almost every American deplors any accident, it is somewhat surprising perhaps that the immediate reaction to the proposal has been less than unanimously enthusiastic.

Why?

To get the answer to that question it is necessary to examine both the dimensions of the proposal and the two basic assumptions on which it rests. These assumptions are: (1) Little is really being done in the area of industrial safety; (2) The Federal Government, and more specifically the Secretary of Labor, given sufficient authority, is equipped to solve existing problems — without creating additional major problems.

The Bill's Provisions

The bill outlines — in general terms — seven goals for the Federal Government in the area of safety:

1. The establishment of mandatory occupational safety and health standards applicable to businesses affecting commerce.
2. Effective enforcement of these safety and health standards.
3. Providing research relating to occupational safety and health.
4. Providing training programs for personnel engaged in the field of occupational safety and health.
5. Delineating more clearly the responsibility of the Federal Government in its activities related to health and safety.
6. Providing grants to the States that could be used to identify needs and responsibilities and to conduct experimental and demonstration projects.
7. Requiring "appropriate" accident and health reporting procedures.

Several of these goals deserve closer scrutiny, especially those relating to standards, enforcement, the grants to the states, and the "delineation" of Federal authority.

Standards. One of the most striking features of the bill is that the power of the Secretary to issue them is unlimited. No guidelines are outlined, other than that the Secretary may prescribe the standards "from time to time after appropriate consultation with other Federal agencies."

Because the bill provides that "any employer engaged in business affecting commerce shall furnish employment and a place of employment which are safe and healthful and shall comply with the standards," presumably they would cover every aspect of a plant from parking lot to cafeteria and wash room.

During hearings so far little attention is being paid to the character of these standards, or whether the Secretary would have difficulty in formulating them for every conceivable type of business in every conceivable location.

Nor was much help obtained from Secretary of Labor Willard Wirtz' testimony on them during hearings. In this prepared Senate testimony, he said:

The bill authorizes the Secretary of Labor to establish safety standards, codes or regulations using all standard-setting agencies, both private and public, in the discharge of this function.

During questioning, he added:

These standards will be the heart of the enforcement procedure which is conducted by HEW as far as the Federal Government is concerned and by other agencies, state agencies and private agencies, the latter of which have developed a good deal of the work which has been done in this standards area.

Several times, the Secretary said that the standards will be established with a "considerable degree of particularity," which probably means in some detail.

Enforcement. Although the Congressional Committees and the Secretary talked little of standards, they did talk a great deal about enforcement of the standards.

In order to carry out the purposes of the Act, the Secretary or his designated representative* is authorized to enter any factory, plant, workplace, or other area subject to the Act at "any reasonable time" and to inspect "such place or environment and all pertinent conditions, structures, machines, apparatus, devices, equipment."

The Secretary may delegate this authority to any other agency of the Federal government or any appropriate State agency.

On the basis of these investigations, the Secretary may move either administratively or through the courts.

Administratively. The Secretary may hold a hearing after which he may issue any order necessary to enforce the provisions of the Act.

*Reasonable questions about Washington understanding of the complexity of industrial safety might be raised by the Secretary of Labor's suggestion during the hearing that the hard-core unemployed be trained as subprofessionals to regulate and enforce the new safety provisions.

If he considers it to be an extreme case involving imminent danger to employees he may shut down the plant completely without any hearings.

The Secretary is authorized to impose a \$1,000 fine for each day the violation existed, if there is a hearing, or for each day that an order is not obeyed.

Courts. The Secretary could also move through the courts whenever he has "reason to believe" that the Act or any safety rules he had issued under it were being violated. On the basis of court decisions in National Labor Relations Board cases, this probably means that the Secretary could receive an injunction without having to prove his case by a preponderance of evidence. He would be required merely to show he has "reason to believe" a violation exists.

The employer has the right to appeal to the Federal District Court for review of the Secretary's order, but that order is continued in effect during the review. There would be no presumption of innocence, and the employer would be required to show that the Secretary determination was wrong.

Criminal penalties — jails and fines — could be imposed for willful violations.

Contracts. Additionally, the Secretary may declare any person ineligible to receive government contracts if he believes that person is disregarding his obligations under the Act. Persons and firms declared ineligible for government contracts cannot appeal to the courts.

Grants to the States. The Act would authorize the Secretary of Labor to make grants to the States to assist them in identifying their needs and responsibilities in the area of occupational safety and health and to develop plans for:

- establishing systems for the collection of information concerning the nature and frequency of occupational injuries and diseases.
- increasing the expertise and enforcement capabilities of State personnel.
- improving the administration and enforcement of State occupational safety and health laws, including standards.

The Federal share for such State grants could go up to 90 percent, but, as a condition for the grant, the State would have to agree to comply with the reporting and accounting requirements prescribed by the Secretary.

Delineation of Authority. Although the goal is stated as "delineation" of authority, it is quite clear that the bill intends the Secretary to take over control of occupational health and safety programs in the United States.

This view is made clear in the wording of the bill which permits the Secretary to either take over or decline jurisdiction — in his discretion — over any occupational or health issues governed by State laws.

It is further supported by the attack on the States that

has been evident in hearings and statements. For example, when Sen. Paul Fannin (R-Ariz.) asked the Secretary of Labor whether the Administration had consulted interested State agencies prior to drafting the bill, the Secretary replied: "Should we ask the foxes what to do with the chicken fence?"

Faulty Assumptions

Although the obviously hastily-drafted proposal to make the Secretary of Labor the Czar of safety in the United States is undoubtedly well-intentioned and stems from a sincere desire to curb accidents, rather than any hope of political gain, it is being sold to the American people on the basis of two faulty assumptions.

The first is that little or no progress is being made under the present system.

The second is that the Secretary of Labor, given unlimited authority, can solve the complex and virtually unlimited problems of industrial safety — without creating additional major problems.

Progress

One accident is one accident too many, of course. It is a fact, however, that the American worker today is the safest in the world, far safer than his grandfather.

Moreover, he is safer on the job than at home, safer than in public places, and most certainly safer than in traffic.

In 1926, there were 31.87 disabling injuries or every million man hours of work.

By 1946, this figure had been reduced by 14.6 injuries per million man hours.

By 1966, the injury rate was again cut in half and was at 6.91 per million man hours.

During 1967, safety in industry again improved.

This progress came from a combination of State, local and private efforts.

Contrary to allegations, employer interest in safety stems primarily from humanitarian reasons. These humanitarian reasons, moreover, are buttressed by very practical reasons.

Accidents cost money — in halted production, lost skilled manpower and increased workmen's compensation costs.

One of the most effective tools for safety has proved to be the highly refined system of pricing workmen's compensation insurance. This system is based on the theory that the price paid by employers for such insurance should bear a rational relationship to the hazards involved in each industry.

Obviously, such an approach forces individual employers and groups of employers to recognize that their accident records directly affect their operating costs.

Under this system, incentives to promote safety are built

into the rate-making techniques, particularly in what is known as the "experience-rating" plan. Under this plan, the employer is penalized or rewarded according to whether his accident record is poor or good.

To meet the challenge of promoting safety, insurance companies and private employers work together.

In a talk to the Fiftieth Annual Convention of the International Association of Industrial Accident Boards and Commissions in 1964, W. S. McCormick, Assistant Secretary of the Aetna Casualty and Surety Company, outlined some of the efforts of the insurance industry.

The first safety engineering corps in North America was created in 1904 — by an insurance company.

In the last half century the casualty insurance industry has spent over \$500 million in safety activities.

Today, insurance companies are spending more than \$30 million annually in areas of safety related to industry . . .

Many of the safety devices and procedures now used by industry were developed by, or with the help of, insurance engineers. Our engineers first established the basic principles of machine guarding and developed enclosures and barricades, remote control operation, accident proof-trips and devices to automatically remove hands from the impact areas of machines . . .

We contribute reams of educational material to the fight against accidents. We make and distribute posters, pamphlets, brochures, even film strips and movies. Speaking for my own company alone, we send out more than two million safety posters to clients every year, and this year we will have produced more than a dozen film strips and a dozen movies for clients and for general safety use. Millions of people see our promotions for on-the-job and off-the-job safety . . .

More certainly can be done, but any implications that nothing is being done, or that all that is needed to make business safety-conscious is to give the Secretary of Labor a big stick is simply not true.

No Panacea

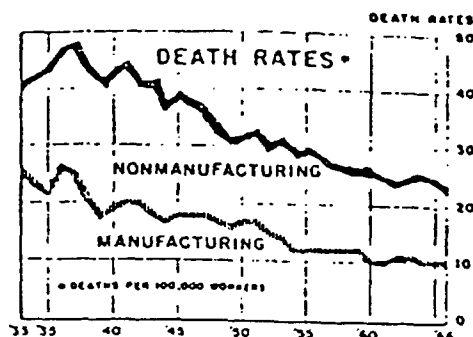
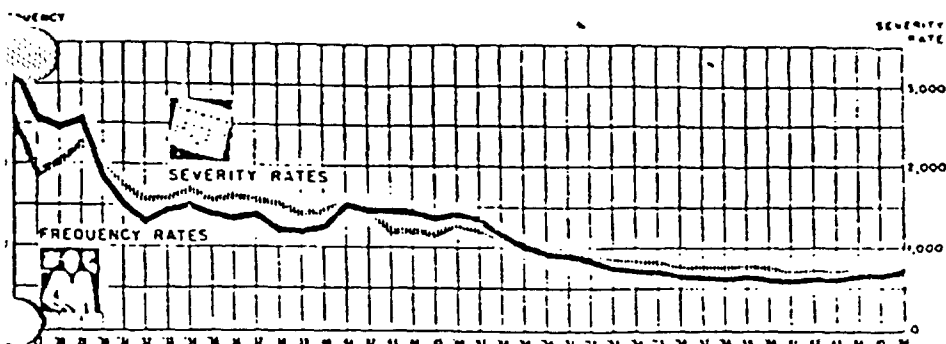
The second faulty assumption is that giving unlimited power to the Secretary of Labor in the area of industrial safety will provide an answer to its complex problems — without creating other major problems.

It is perhaps significant that the safety record of civilian employees as measured by the rate of injury has been higher than the industrial average.

The National Safety Council reported that the frequency rate for disabling injuries per 1,000,000 man hours in 1966 was 6.91. The rate for all Federal civilian employees in 1965 — the last year for which statistics are available — was 7.30.

In 1965, the President launched with great fanfare, "Safety-70", which is designed to cut accidents and deaths among Federal civilian employees by 30 percent by 1967.

Although the success of the program is not yet public



—Accident Facts, 1967

knowledge, it is interesting to note that Joseph Young, writing in the *Washington Star* on February 19, pointed out:

... some Government departments and agencies, in a move to reduce the number of reported on-the-job injuries among their employees, have sought to discourage or prevent employees from filing injury compensation claims.

Although the present proposal follows the now familiar pattern of turning over our problems to a Presidential appointee to solve, the unlimited and undefined power that would be conferred upon him raises a host of questions.

For example:

Would the Secretary re-write local building codes in the interests of safety?

Would he revise local fire regulations in the interest of safety?

Or consider other questions.

Could the extensive powers conferred upon the Secretary be misused by some future labor Secretary — a position, which George Meany, AFL-CIO president has described as "labor's voice" in Government?

For example:

Could a plant where workers were on strike be closed down, because the Department of Labor ruled that its operation with skeleton crews or supervisory employees constituted a safety hazard?

Could crew sizes — a disputed issue between management and unions in many industries — be fixed by the Secretary of Labor as a "safety" measure?

Other interesting possibilities were raised at the hearings — particularly the argument that the bill could be used indirectly to set standards on all items of equipment used in plants.

Representative O'Hara, the sponsor of the bill and chair-

man of the Select Labor Subcommittee followed up a question by Representative Hathaway (D-Mc.) with this observation.

Mr. Secretary, it would seem to me that in setting enforceable safety standards with respect to interstate business, we would say, for instance, with respect to items of equipment that — let's take a crane example — that a crane must be counterbalanced or counterweighed to the extent of so much per whatever amount of load it is expected to pick up and so forth, and it must be of such and such a structure and such and such a strength and so forth. . . .

While we would not have directly regulated the manufacturer of the crane, by saying to the user of the crane you cannot use the crane unless it meets certain standards, in effect the manufacturer of the cranes cannot sell them.

He would have to, in order to find a market for his product, be able to produce a product that the user could then use to meet the standards set under the Act. That is how I would envision that particular aspect of it.

No one denies that industrial safety poses a challenge to everyone — individual, employer, insurance company, State agencies, and the Federal Government.

In large measure however, the American people are being asked to make the Secretary of Labor a Czar of Safety. To some extent, as the result of the sweeping and loosely — defined powers conferred upon the Secretary they are being asked to "buy a pig in a poke."

In doing so, at the risk of mixing metaphors, they may be in danger of "throwing the baby out with the bath water." In the hope that the Secretary, if given unlimited authority, may be able to impose forcibly better safety practices, we may be jeopardizing such basic rights as a fair trial and the presumption of innocence, as well as such basic principles in government as the separation of powers.

To buy a pig in a poke involves a certain amount of risk. Throwing the baby out with the bath water is a serious violation of safety standards.

Failure of a cloture motion to curb debate, plus failure to remove the open housing provisions from the Civil Rights bill by the Senate probably means that it cannot be passed at this time. Minority Leader Dirksen (R-Ill.) insists, however, that some form of compromise Civil Rights bill can be passed at this session. If the second vote for cloture, scheduled for February 26 fails, Senate Majority Leader Mansfield (D-Mont.) will probably turn to new legislation -- most likely S. 2557, which would remove the required 25% gold backing for paper currency. The proposal has been reported by the Senate Banking and Currency Committee....

In the House, debate on its version of the gold cover bill (H.R. 14743) boiled over into a bitter partisan clash on the health of the economy, before the measure was passed by a narrow margin of 199-190. The bill is designed to ease the balance-of-payments problem by releasing almost \$12 billion in gold for sale to foreign central banks....

Congress is nearing final approval of the long-delayed bill (S. 1155), extending the life of the Export-Import Bank for five years and increasing its lending authority from \$9 billion to \$13.5 billion. The compromise version retains the House provision that prohibits any bank loans to countries trading with or furnishing military aid to North Vietnam as long as the war lasts....

The House, following approval by the Ways and Means Committee of H.R. 15414, is expected to act soon on this proposal to speed up corporate income tax payments and to maintain auto and telephone excise taxes at current levels until 1970. The Committee said its decision to approve only these parts of the Administration's tax package isn't intended to "prejudice possible future action on the requested 10 percent surcharge....

Proposed taxes on foreign travel are running into heavy opposition at House Ways and Means hearings. Business representatives are also using the hearings to attack the recently-imposed regulations governing repatriation of foreign earnings by U.S. companies. Some panel members have indicated they will urge relaxation of the regulations.

Nine Democratic and nine Republican Senators, led by Sen. Eastland (D-Miss.) are

sponsoring S. 2988, which, among other things, would ban employment of Communists by the Federal government, in defense plants or in educational institutions receiving Federal funds....

President Johnson has asked Congress to shift \$5.7 million from the general funds of the Treasury to his war on crime. The money would be used to add 100 new assistant U.S. attorneys, 100 new FBI agents, and more agents in the Bureau of Narcotics and the Bureau of Drug Abuse....

The Subcommittee on National Parks and Recreation of the House Interior and Insular Affairs Committee will hold hearings March 7-9, 18-19 on a variety of proposals to establish a scenic rivers system.... The House has passed and sent to the Senate, H.R. 14935, which prohibits mail order firms from offering a set of keys that can open and start automobiles....

Congress has passed and sent to the President for signature the Fire Research and Safety Act (H.R. 11284), a bill requested by President Johnson in both his 1967 and 1968 messages on consumer protection. The bill authorizes a two-year, \$5-million Federal program of research on the causes of fire and the methods of reducing loss of life and property from fire. It also establishes a 20-member National Commission on Fire Prevention and Control.... Also cleared for the President's signature was S. 306, which increases the authorization for Indian vocational education programs from \$15 million to \$25 million, and H.R. 13094, which amends the 1936 Commodity Exchange Act to strengthen regulation of the commodity futures markets, including livestock and livestock trading....

Chairman Staggers (D-W.Va.) of the House Interstate and Foreign Commerce Committee, apparently disturbed by an FCC decision which rejected a proposed policy designed to prevent concentration of television station ownership in large cities, has called hearings for March 5-6 in his Subcommittee on Investigations on the Fairness Doctrine (Section 315) of the Communications Act.... The House Subcommittee on Public Health and Welfare is continuing its hearings on amending the Food and Drug Act to include penalties for illegal manufacture and traffic in hallucinogenic drugs. (H.R. 15355).

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The Senate Labor Committee will meet again on February 29 on S. 1306, the proposal that would give the Equal Employment opportunity Commission NLRB-type powers, including authority to issue "cease-and-desist" orders. The Senate panel is expected to approve the bill, either on the 29th or soon thereafter.

The House Interstate Commerce Committee is studying, although no hearings have yet been scheduled, the FTC-backed measure (H.R. 15354) that would permit the Commission to seek preliminary injunctions in cases involving acts or practices that are "unfair or deceptive" to the consumer....

William Roth, the President's Special Representative for Trade Negotiations, said in a recent speech that hearings would be held starting about March 25 on an as-yet-unintroduced bill that would be designed to (1) liberalize adjustment aid to marginal enterprises and their workers suffering from import competition; (2) give the President authority to adjust tariffs from time to time, and (3) end the American Sealing Price system of customs valuation....

Congressman John H. Dent (D-Pa.), chairman of the House Subcommittee on Labor, told the Chamber's Private Pension Plans Committee, that he may begin comprehensive pension hearings in March. His Subcommittee will study both public and private pension plans, Rep. Dent said. He voiced concern over whether "... the American people may soon be forced to choose between the continuation of private plans and the growth and improvement of their primary public counterpart -- Social Security...."

March 12, 13, 14 are dates for hearings in the Senate Commerce Committee on S.J. Res. 129 (Magnuson, D-Wash.), which would authorize the Department of Transportation to conduct a study of the adequacy of automobile insurance regulation and the present system of compensating motor vehicle accident victims.

The House has approved the first Appropriations bill of the Session -- a \$1.2 billion supplemental measure to provide funds for welfare and the Medicaid program. Administration spokesmen said the funds are needed because a sharp increase in the number of families on relief plus unexpected costs for the Medicaid program caused them to underestimate costs....

The Senate Subcommittee on Labor, with Senator Yarborough, D-Tex. as chairman, has been holding hearings on S. 2485, amendments to the Longshoremen's and Harbor Workers Compensation Act. Some observers believe the bill would serve as the Administration's "model" for assuming jurisdiction over State worker's compensation laws....

Chairman Wilbur Mills (D-Ark.) has proposed a two-year extension of the Renegotiation Act in its present form, and his bill (H.R. 14802) is expected to be approved by the panel without hearings....

President Johnson in a Special Message has urged Congress to enact a multi-billion dollar, 10-year program to meet the "crisis" of the cities. He urged appropriations of \$65 million for the rent supplement program; \$1 billion for the Model Cities program; and \$2.18 billion for the war on poverty. The President set a 10-year goal of 26 million new housing units, of which he hoped, private enterprise would build 20 million. Six million would be stimulated by Federal programs, with 300,000 scheduled for fiscal year 1969 for the poor, the elderly, the handicapped, the displaced and those with moderate incomes.

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