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Section 5889-a. (a) When a vacancy occurs in the office of judge of any judicial circuit during such time as there are more than twenty-five judicial circuits in the State, the Governor shall defer the filling of the vacancy unless and until the necessity therefore be certified to him by the Supreme Court of Appeals as hereinafter provided.

(b) Upon any such vacancy occurring, the court shall promptly secure, by such means as it deems proper, sufficient information concerning the volume of business in that circuit and in the other judicial circuits adjacent or near thereto, to enable it to determine whether or not the business of that circuit can be so distributed as to render the filling of the vacancy unnecessary.

(c) The court shall communicate its findings with respect thereto, to the Governor, and to the General Assembly if it is in session and if not in session then at its next succeeding session, and if it appear therefrom that the court deems it necessary the Governor, if the General Assembly be not in session, shall, fill the vacancy in the manner prescribed by law.

(d) In any case in which a vacancy occurs or exists while or when the General Assembly is in session, it may proceed to fill the vacancy without awaiting the report of the court.

2. An emergency exists and this act is in force from its passage.

CHAP. 76.—An ACT to authorize the governing bodies of certain counties to require licenses and impose and collect license taxes on certain motor vehicles used as taxicabs or for the transportation of passengers for a consideration. [H 107]

Approved February 28, 1944

Be it enacted by the General Assembly of Virginia:

1. Section 1. The governing body of any county having a population of more than thirty-five thousand and which adjoins two cities having populations of not less than fifty thousand each, and the governing body of any county having an area less than seventy-two square miles, may require a license for and impose upon and collect a license tax from every person, firm, association or corporation who or which operates or intends to operate in such county any taxicab or other motor vehicle for the transportation of passengers for a consideration. The tax may be upon each such motor vehicle so operated. The governing body of the county may by ordinance provide for levying and collecting the tax, and may impose penalties for violations of the ordinance and for operating any such motor vehicle without obtaining the required license.

Section 2. No such county shall require a license or impose a license tax for the operation of any such motor vehicle for which a similar license is imposed or tax levied by the city or town of which the owner or operator of the motor vehicle is a resident; nor shall more than one county, city or town impose any such license fee or tax on the same vehicle. This act shall not be construed to apply to common carriers of persons or property operating between cities and towns and not in intra-county transportation; nor to any person, firm, corporation or association operat-

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ing as public carrier by authority of the State Corporation Commission or under a franchise granted by any city or town.

CHAP. 77.—An ACT to amend Chapter 400 of the Acts of Assembly of 1918, which became a law without the approval of the Governor March 21, 1918, known as "The Virginia Workmen's Compensation Act", as it has been amended from time to time, in order to extend the scope of the law to include certain coverage of occupational diseases; and to such end, to amend and re-enact, as previously amended, Section 2, by re-enacting the matter of Section 2, with certain amendments, as follows: Section 2, and five new sections numbered 2-a, 2-b, 2-c, 2-d and 2-e; and to add to the law eleven other new sections numbered 2-f, 2-g, 2-h, 2-i, 2-j, 2-k, 2-l, 2-m, 2-n, 2-o and 2-p. [11 174]

Approved February 28, 1944

Be it enacted by the General Assembly of Virginia:

1. That section two of chapter four hundred of Acts of Assembly of nineteen hundred eighteen, which became a law without the approval of the Governor March twenty-one, nineteen hundred eighteen, known as "The Virginia Workmen's Compensation Act", as from time to time amended, be further amended and re-enacted as section two and as five new sections numbered two-a, two-b, two-c, two-d and two-e, and that there be added eleven new sections numbered two-f, two-g, two-h, two-i, two-j, two-k, two-l, two-m, two-n, two-o and two-p, as follows:

Section 2. The meanings to be attached to certain terminology and the scope and coverage of this law are as set forth specifically in the several following sections.

Section 2-a. Employers Defined.—Unless the context otherwise requires: "Employers" includes the State and any municipal corporation therein or any political division thereof, and any individual, firm, association or corporation, or the receiver or trustee of the same, or the legal representative of a deceased employer, using the service of another for pay. If the employer is insured it includes his insurer so far as applicable.

Section 2-b. Employee Defined.—Unless the context otherwise requires: "Employee" includes every person, including a minor, in the service of another under any contract of hire or apprenticeship, written or implied, except one whose employment is not in the usual course of the trade, business, occupation or profession of the employer; and as relating to those so employed by the State the term "employee" includes the officers and members of the National Guard, the Virginia State Guard and the Virginia Reserve Militia, and all officers and employees of the State, except only such as are elected by the people, or by the General Assembly, or appointed by the Governor, either with or without the confirmation of the Senate; as relating to municipal corporations and political divisions of the State, the term "employee" includes all officers and employees thereof, except such as one elected by the people or by the governing body of the municipal corporation or political division, who act in purely administrative capacities and to serve for a definite term of office.

Policemen and firemen, except policemen and firemen in cities containing more than one hundred seventy thousand inhabitants, shall be deemed to be employees of the respective cities, counties or towns in which their services are employed and by whom their salaries are paid. Any reference to an employee who has been injured shall, when the employee is dead, include also his legal representative, dependents and other persons to whom compensation may be payable. For the purpose of this act the average weekly wage of the non-commissioned officers and members of the National Guard, the Virginia State Guard and the Virginia Reserve Militia shall be deemed to be such amount as will entitle them to the maximum compensation payable under this act.

Section 2-c. Average Weekly Wages Defined.—Unless the context otherwise requires: "Average weekly wages" means the earnings of the injured employee in the employment in which he was working at the time of the injury during the period of fifty-two weeks immediately preceding the date of the injury, divided by fifty-two; but if the injured employee lost more than seven consecutive calendar days during such period, although not in the same week, then the earnings for the remainder of the fifty-two weeks shall be divided by the number of weeks remaining after the time so lost has been deducted. When the employment prior to the injury extended over a period of less than fifty-two weeks, the method of dividing the earnings during that period by the number of weeks and parts thereof during which the employee earned wages shall be followed, provided, results fair and just to both parties will be thereby obtained. When by reason of a shortness of time during which the employee has been in the employment of his employer or the casual nature or terms of his employment, it is impracticable to compute the average weekly wages as above defined, regard shall be had to the average weekly amount which during the fifty-two weeks previous to the injury was being earned by a person of the same grade and character employed in the same class of employment in the same locality, or community.

But when for exceptional reasons the foregoing would be unfair either to the employer or employee, such other method of computing average weekly wages may be resorted to as will most nearly approximate the amount which the injured employee would be earning were it not for the injury.

Whenever allowances of any character made to an employee in lieu of wages are specified part of the wage-contract, they shall be deemed a part of his earnings.

Section 2-d. Injury Defined.—Unless the context otherwise requires: "Injury" and "personal injury" mean only injury by accident, or occupational disease as hereinafter defined, arising out of and in the course of the employment and do not include a disease in any form, except when it results naturally and unavoidably from either of the foregoing causes.

Section 2-e. Compensation for Hernia; When Allowed.—In all claims for compensation for hernia resulting from injury by accident arising out of and in the course of the employee's employment, it must be definitely proved to the satisfaction of the "Industrial Commission".

First: That there was an injury resulting in hernia;
 Second: That the hernia appeared suddenly;
 Third: That it was accompanied by pain;
 Fourth: That the hernia immediately followed an accident;
 Fifth: That the hernia did not exist prior to the accident for which compensation is claimed.

All hernia, inguinal, femoral or otherwise, so proven to be the result of an injury by accident arising out of and in course of the employment shall be treated in a surgical manner by radical operation. If death results from such operation, the death shall be considered as a result of the injury, and compensation paid in accordance with the provisions of section thirty-nine. In non-fatal cases, time lost only shall be paid, unless it is shown by special examination, as provided in section twenty-eight, that the injured employee has a permanent partial disability resulting after the operation. If so, compensation shall be paid in accordance with the provisions of section thirty-one with reference to partial disability.

In case the injured employee refuses to undergo the radical operation for the cure of the hernia, no compensation will be allowed during the time the refusal continues. If, however, it is shown that the employee has some chronic disease, or is otherwise in such physical condition that the Commission considers it unsafe for the employee to undergo the operation, the employee shall be paid as provided in section thirty-one.

Section 2-f. Occupational Disease Defined.—As used in this law, unless the context clearly indicates otherwise, the term "occupational disease" means a disease arising out of and in the course of the employment. No ordinary disease of life to which the general public is exposed outside of the employment shall be compensable, except when it follows as an incident of occupational disease as defined in this law. 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 (1) a direct causal connection between the conditions under which work is performed and the occupational disease, (2) it 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, (3) it can be fairly traced to the employment as the proximate cause, (4) it does not come from a hazard to which workmen would have been equally exposed outside of the employment, (5) it is incidental to the character of the business and not independent of the relation of employer and employee, and (6) it must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction.

Section 2-g. Schedule of Occupational Diseases.—The following diseases and conditions shall be deemed to be "occupational diseases", and even they shall not be so considered unless they are in fact occupational within the meaning of the definition "occupational disease" as defined in this law: (1) Anthrax; (2) Asbestosis; (3) Cataract of the eyes due to exposure to the heat and glare of molten glass or to radiant rays such as infra-red; (4) Compressed air illness; (5) Conjunctivitis or retinitis

due to exposure to radiant rays; (6) Cellulitis; (7) Dermatitis; (8) Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye due to pitch, tar, soot, bitumen, anthracene, paraffin, mineral oil, or their compounds, products, or residues; (9) Glanders; (10) Infection or inflammation of the skin or eyes, or other external contact surfaces or oral or nasal cavities due to irritating oil, cutting compounds, chemical dust, liquid fumes, gases or vapors; (11) Infections or contagious diseases contracted in the course of employment in or in immediate connection with a hospital or sanitarium in which persons suffering from such diseases are cared for and treated; (12) Poisoning by; (i) Ammonia; (ii) Arsenic; (iii) Benzol or derivatives of benzene; (iv) Brass; (v) Cadmium; (vi) Carbon bisulphide or any sulphide; (vii) Carbon dioxide; (viii) Carbon monoxide; (ix) Carbon tetrachloride or other toxic chlorinated hydrocarbons or toxic halogenated hydrocarbons; (x) Chlorine; (xi) Cyanide; (xii) Dinitrophenol; (xiii) Formaldehyde and its preparations; (xiv) Hydrochloric acid; (xv) Hydrofluoric acid; (xvi) Hydrogen sulphide; (xvii) Lead; (xviii) Manganese; (xix) Mercury; (xx) Menthonol (wood alcoholic); (xxi) Methyl chloride; (xxii) Nickel carbonyl; (xxiii) Nitrous fumes; (xxiv) Nitric acid; (xxv) Petroleum or petroleum products; (xxvi) Phosphorus; (xxvii) Sulphur dioxide; (xxviii) Sulphuric acid; (xxix) Tetrachlor-methane or any substances used as or in conjunction with a solvent for acetate of cellulose or nitro cellulose; (xxx) Turpentine; (xxxi) Zinc; (13) Radium disability or disability due to exposure to radio-active substances and X-Ray; (14) Silicosis; (15) Ulceration due to chrome compound or to caustic chemical, acids or alkalis, and undulant fever caused by the industrial slaughtering and processing of livestock and the handling of hides.

Section 2-h. Rejection by Employer of Schedule 2-g and Acceptance of Full Coverage.—Any employer may in lieu of the schedule of occupational diseases herein enumerated under the provisions of Section two-g, reject the same and elect by written declaration filed in the offices of the Industrial Commission on a form provided by it, to be bound by the provisions of this section relating to full coverage of all occupational diseases. Thereupon, the employer shall be liable for all occupational diseases arising out of and in the course of employment pursuant to all provisions of the act applicable thereto.

The election above provided shall be made by the employer within sixty (60) days from July one, nineteen hundred forty-four, and the employer shall be liable under this provision from said date. Any election made more than sixty (60) days after July one, nineteen hundred forty-four, shall become effective the day it is received by the Industrial Commission. An election once made shall be effective until withdrawn in writing signed by the employer and filed in the offices of the Industrial Commission. Thereafter, the employer shall be liable under the provisions of Section two-g, relating to scheduled coverage. An election once made shall not be withdrawn within a period of one year.

It is expressly enacted that this provision shall be construed as an

alternate plan covering all occupational diseases, including those enumerated in Section two-g.

Section 2-i. **Pre-existing Occupational Disease.**—An occupational disease which an employee has on the effective date of the amendments of this law shall not be covered hereunder. An employee has an occupational disease within the meaning of this law if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease. In every hearing before the Industrial Commission in this regard under this law, the burden shall be on the employee to prove that he did not have as of the effective date hereof the occupational disease for which he is seeking compensation.

Section 2-j. **Provisions as to Injury or Death by Accident Applicable to Same Resulting from Occupational Disease.**—When the employer and employee are subject to the provisions of the Workmen's Compensation Act, the incapacity for work or death of an employee resulting from an occupational disease as herein listed and defined shall be treated as the happening of an injury by accident or death by accident, and the employee or in case of his death his dependents shall be entitled to compensation as provided by the Act. An employee who has an occupational disease that is covered by this law shall be entitled to the same hospital, medical and miscellaneous benefits as an employee who has a compensable injury by accident, except that the period during which the employer shall be required to furnish medical attention shall begin as of the date of incapacity for work, and in the event of death the same funeral benefits shall be paid as in the case of death from a compensable accident. All provisions of the Act in respect to accidents shall be applicable to the coverage provided for by this amendment, except as otherwise provided herein.

Section 2-k. **What Employer and Carrier Liable.**—When an employee has an occupational disease that is covered by this law as amended, the employer in whose employment he was last injuriously exposed to the hazards of the disease, and the employer's insurance carrier, if any, at the time of the exposure, shall alone be liable therefor, without right to contribution from any prior employer or insurance carrier.

Section 2-l. **Notice to Be Given.**—Within thirty days after the first distinct manifestation of an occupational disease the employee, or someone on his behalf, shall give written notice thereof to the employer in accordance with sections twenty-three and twenty-four of this Act.

Section 2-m. **Limitation upon Claim.**—The right to compensation under these amendments shall be forever barred unless a claim be filed with the Industrial Commission within one year after the beginning of incapacity for work resulting from an occupational disease, and if death results from the occupational disease unless a claim therefor be filed with the Commission within one year thereafter.

Section 2-n. **Waiver.**—When an employee or prospective employee, though not incapacitated for work, is found to be affected by, or susceptible to, a specific occupational disease he may, subject to the approval of the Industrial Commission, be permitted to waive in writing compensation for any aggravation of his condition that may result from