MEMORANDUM RELATING TO

"SUGGESTIONS FOR PROVISIONS FOR A WORKMEN'S COMPENSATION PLAN FOR OCCUPATIONAL DISEASES FOR THE STATE OF ILLINOIS."

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To remedy the intolerable existing situation respecting occupational disease cases, it is proposed that three bills be introduced at the coming session of the legislature.

One bill, in the form of an amendment to the civil administrative code, adds three medical members to the Industrial Commission, making a total of eight, and lays down the qualifications, salaries and terms of office of such three medical members, and also extends the powers and duties of the Industrial Commission of five non-medical members and three medical members to include the administration of the proposed Occupational Diseases Act.

The second proposed bill is in the form of an amendment to the present Health, Safety and Comfort Law, and in addition to amending certain paragraphs thereof, adds twelve sections containing the desirable subject matter of the first fourteen sections of the present Occupational Diseases Act, which sections relate solely to prevention, etc. However, the subject matter has been revised in this amended bill to render it truly workable, and to require of the employer all that is reasonable in the way of prevention, monthly examinations, etc., but to include only what is reasonable. This bill will place this subject matter where it belongs and will leave the proposed "Workmen's Occupational Diseases Act" to deal, as it should, only with the compensation scheme or plan.

The basic outline of the proposed Occupational Diseases Act is as follows:

The broad provision granting compensation is made subject to the other terms, conditions, definitions, limitations and exceptions in the rest of the Act, and is restricted to occupational diseases peculiar and incident to the nature of the occupation or process sought to be charged and liability in the particular case is imposed on the employer who last exposed the claimant before disablement (as in Wisconsin since the amendment of July 14, 1933) but with the exception of silicosis and asbestosis in which the liability is imposed on the employer who last exposed the claimant to the hazards of those diseases for a period exceeding thirty days or more. This test of liability has been chosen after profound study to avoid making every case a law suit on the issue of fact of who last actually injured the claimant, as distinguished from actually exposing him to the hazards of the disease. The former test, while a just one, opens the door to collusion, fraud, perjury, illwill between employers and their carriers and among employers themselves, and in many instances prevents the claimant from being able to ascertain who is liable, forcing him to make claim against several employers, and it is feared that the fundamental purposes of the law would be defeated by any such test of liability, and that a situation as unsatisfactory as that now existing might result. The test of last exposure, with the minimum of thirty days

in silicosis and asbestosis is workable, expedient, and will work no hardship on employers for the reason that it may be determined before employment whether an applicant has an occupational disease.

The proposed bill extinguishes all liability other than compensation for any disease covered thereunder.

It applies automatically to all employers having hazardous processes excepting farmers and farm work, and contains election and rejection provisions as to cases in which the last exposure pre-dated the effective date of the law and as to employees not engaged in the usual course of the employers' business.

The term "employer" and the term "employee" are defined the same as in the Workmen's Compensation Act but public employees and employers are not included.

Important is the fact that occupational diseases covered are limited to those contained in a schedule set forth in the bill, as distinguished from blanket phraseology to be construed by arbitrators, commissions and judges throughout the state and in the higher courts. The schedule has been drawn to include all diseases generally considered by medical authority to be attributable to occupations, and in case other occupational diseases should develop they may be added by amendment. The other plan of blanket phraseology (commonly referred to as "all-inclusive") would breed speculative and wasteful litigation, create doubts and uncertainties and thereby needlessly increase the burden upon industry. It might also serve to defeat the main object of making certain the payment of compensation to injured workmen and their dependents. No insurance company, however ample its resources may be, could safely undertake to insure unknown risks and a blanket (all-inclusive) clause could only mean the assumption of unknown liability.

"Disablement" and "disability" are specifically defined so as to include only actual physical inability to perform normal labor in the last occupation in which the claimant was remuneratively employed and so as to not include situations in which the employee is prohibited from continuing because further exposure would be dangerous.

The compensation provisions conform to the similar provisions of the Workmen's Compensation Act respecting accidental injuries. The average annual earnings are computed the same as in the Workmen's Compensation Act.

The lump sum provision contains the safeguard that no lump sum may be granted over objection unless it appears reasonably certain that the objecting party will not be relieved of any part of the payments by improvement in the disability or a change in marital status.

Examinations of claimants may be had by the employer the same as in section 12 of the Workmen's Compensation Act. Any two medical members of the commission may require an autopsy and the findings thereon are to be placed on record. Evidence gained through secret autopsies may be suppressed on objection.

The bill provides for medical treatment for sixty days and for an additional ninety days if the medical members so require.

The furnishing of medical or the payment of compensation does not admit liability; objective symptoms of the disease and of the disability must be proven by evidence other than, or in corroboration of, the employee's own testimony. Cases compensable under the Workmen's Compensation Act are excepted. False representation in writing by a new employee as to previous actual disability on account of a disease bars him. Except certain children, only relationships existing at disablement can form the basis for a death claim. In aggravation cases where an occupational disease and an independent disease or infirmity concur, compensation is appropriately proportioned.

Disablement or death must result within one year after the last exposure except in silicosis and asbestosis in which it may result within three years. Death must occur within seven years after the first disablement and must follow continuous disability.

In silicosis and asbestosis there must be a total exposure of three years, two of which, including the last exposure, must be in this state with certain exceptions where the employee worked for the same employer the whole three years.

Unsanitary or injurious practices are grounds for suspension of compensation in the discretion of the medical members.

Notice must be given the employer as soon as practicable after first disablement, claim must be made against employer within six months after disablement, and application for adjustment of claim must be filed with the Commission within one year after disablement, or after the last payment if any.

The application filed with the Commission must contain certain information set out in the bill and frequently necessary to proper investigation and defense.

Proceedings for compensation are the same as under the Workmen's Compensation Act but on arbitration the three medical commissioners designate a physician as the arbitrator; he hears all the evidence and himself examines and bases his decision on the evidence plus his own examination. On review the medical member must hear the case and may also examine. Proper provision is made for the preservation, in the record, of everything upon which decisions are based so that the right of judicial review be not impaired. Decisions on review must be with the concurrence of two medical members on medical questions and three non-medical members on other questions.

The provisions of sections 25, 26, 27, 28, 29, 30 and 30½ of the Workmen's Compensation Act are followed, but it is provided that insurance for accidental injuries and for occupational diseases under the two Acts shall be separate and distinct.

Unreasonable or vexatious delay of payment or frivolous litigation are subject to 50 per cent penalty as under the Workmen's Compensation Act.

The bill includes a clause repealing the present Occupational Diseases Act.

The bill has been drafted with a view to validity, insurability, workability, safeguards against fraud and exploitation, bearable burden, competent and just administration and adjudication, avoidance of litigation-producing features and substantive fairness to labor, the employer and the carrier.

A copy of the proposed "Workmen's Occupational Diseases Act" is attached.

Prepared by
Occupational Diseases Committee
Illinois Manufacturers' Association
January 17, 1935.

SUGGESTIONS FOR PROVISIONS FOR A WORKMEN'S COMPENSATION PLAN FOR OCCUPATIONAL DISEASES FOR THE STATE OF ILLINOIS

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A BILL FOR

AN ACT to promote the general welfare and health of the people of this State by providing compensation for disability or death caused by occupational disease due to the nature of the employment within this State, providing for the enforcement and administering thereof, and penalties for its violation and repealing an Act entitled "An Act to promote public health by protecting certain employees in this State from the dangers of occupational diseases, and providing for the enforcement thereof" approved May 26, 1911, as subsequently amended.

Prepared by
Occupational Diseases Committee
Illinois Manufacturers' Association
January 17, 1935..

Section 1. Be it enacted by the People of the State of Illinois represented in the General Assembly: That subject to the terms, conditions, definitions, limitations and exceptions hereinafter in this Act provided, where an employee suffers from an occupational disease as hereinafter defined, and is thereby disabled from performing normal labor in the last occupation in which remuneratively employed, or dies as a result of such disease, and the disease is peculiar and incident to the nature of an occupation or process in which he was employed at any time within one year, or in case of silicosis or asbestosis within three years, previous to his disablement, and the last exposure to the hazard of such disease took place in such occupation or process in this State, the employee, or in case of death, certain of his dependents shall be entitled to compensation from the employer in whose employ such last exposure took place.

Section 2. The compensation and benefits herein provided shall be the full, complete and only measure of the responsibility of any employer bound automatically or by election under Section 3 of this Act and such employer's liability for compensation and medical benefits under this Act shall be exclusive and in place of any and all other civil liability whatsoever, at common law or otherwise, to any employee or his personal representatives, dependents, next of kin, spouse, parents, guardian, or any others, on account of damage, disability, or death caused or contributed to by any disease or injury to the health included in Section 5 of this Act, except injuries compensable as being accidental injuries under the Workmen's Compensation Act, and therefore excluded in this Act.

Section 3. (a) This Act, including the provisions excluding liability otherwise than under this Act, shall apply automatically and without election to all employers, as herein defined, engaged in any business or enterprise in which any employee as herein defined, is, while in the course of his duties, exposed to the hazard of any occupational disease as herein defined, and to all the employees of such employers, in whatever department employed; provided, nothing contained herein shall be construed to apply to any work, employment or operations done, had or conducted by farmers and others engaged in farming, tillage of the soil, or stock raising, or to those who rent, demise or lease land for any such purposes, or to anyone in their employ or to any work done on a farm or country place, no matter what kind of work or service is being done or rendered.

(b) This Act shall not apply, without election, to cases of occupational diseases in which the last exposure to the hazards of such disease occurred before this Act shall have taken effect; provided, however, that after this Act takes effect any employer may elect, as to all employees who were in his employ prior to the taking effect of this Act and who are still in his employ at the time of such election, to provide and pay compensation according to the provisions of this Act for occupational diseases in which the last exposure to the hazards of such disease occurred before the taking effect of this Act, by filing notice of such election with the Industrial Commission, and posting a copy of said notice in five conspicuous places in his plant, and

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every employee who may be employed at the time of posting such notices and who was employed by such electing employer prior to the taking effect of this Act shall be bound by such election, and shall be deemed to have accepted all the provisions of this Act relating to compensation and medical benefits as the sole and only measure of responsibility and liability of his employer with respect to occupational diseases in which the last exposure occurred before the taking effect of this Act, unless within thirty days after the said filing and posting of notice, such employee shall file a notice to the contrary with the Industrial Commission, whose duty it shall be to ~~immediately~~ notify the employer.

(c) Any employer may elect to provide and pay compensation under this Act to any employee other than those engaged in the usual course of the trade, business, profession, or occupation of the said employer, thereby relieving himself from any other liability as to such employees not so engaged, and therefore not automatically bound, in the same manner and subject to the same terms and conditions as are provided in paragraphs (a), (b), (c) and (d) of Section 1 of the Workmen's Compensation Act.

Section 4. (a) In this Act the term "Employer" shall be construed to mean every person, firm, public or private corporation, including hospitals, public service, eleemoysynary, religious or charitable corporations or associations who has any person in service or under any contract of hire, express or implied, oral or written.

(b) The term "employee" as used in this Act, shall be construed to mean every person in the service of another under any contract of hire, express or implied, oral or written, including aliens, and minors who, for the purpose of this Act shall be considered the same and have the same power to contract, receive payments and give quittances therefor, as adult employees, but not including any totally blind person or any person who is not engaged in the usual course of the trade, business, profession or occupation of his employer.

Section 5. (a) The following diseases only shall be deemed to be occupational diseases:

1. Anthrax, Undulant Fever, Tularemia, Glanders.

2. Poisoning by any of the following metals, acids and chemicals: Arsenic, Brass, Zinc, Lead, Manganese, Mercury, Nickel Carbonyl, Phosphorus, Benzol and its homologues, Benzine, Carbon Monoxide, Carbon Tetrachloride, Chromium Compounds, Hydrochloric Acid, Hydrofluoric Acid, Methanol, Methyl Chloride, Nitrous Gases, Nitric Acid, Phenol and its compounds, Sulphur Dioxide, Sulphuric Acid, Tetrachlorethane.

3. Dermatitis venenata Dermatoses or affections of the skin resulting from exposure to poisonous and irritating chemicals, heat and cold, dust, radiant energy, friction, plants and wood, proteins, vegetable and animal parasites.

4. Compressed-Air Disease or Caisson Disease.

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5. Asbestosis.

6. Silicosis.

(b) "Silicosis" shall mean a fibrotic condition of the lungs resulting from the inhalation of free silica dust sufficient to cause, and causing, disability. "Asbestosis" shall mean a fibrotic condition of the lungs resulting from the inhalation of asbestos dust sufficient to cause, and causing, disability.

Section 6. In this Act "disablement" means the event of becoming physically incapacitated, because of any of the Occupational diseases herein specified as such, from performing normal labor in the last occupation in which the claimant was remuneratively employed; and "disability" means the state of being so incapacitated; provided that no employee shall be deemed to have suffered disablement or disability either total or partial where he is prevented from performing any occupation or any part thereof solely because of the danger to him, in his condition, of exposure or further exposure therein and not because the disease has rendered him physically incapable of performing the physical labor of such occupation.

Section 7. Except as otherwise in this Act provided, the compensation payable for disablement resulting in death shall be:

(a) If the employee leaves any widow, child or children whom he was under legal obligations to support at the time of his disablement, a sum equal to four times the average annual earnings of the employee, but not less in any event than two thousand five hundred dollars and not more in any event than four thousand dollars. Provided, that when an award has been made under this paragraph where the deceased left at the time of his death a widow and one child under sixteen years of age him surviving, the compensation payments and death benefits to the extent the same were increased because of the existence of said child, insofar as same have not been paid, shall cease and become extinguished when said child arrives at the age of eighteen years, if said child is physically and mentally competent at that time.

Any right to receive compensation hereunder shall be extinguished by the remarriage of a widow, if the deceased did not leave him surviving any child or children whom he was under legal obligation to support at the time of said disablement.

Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

(b) If no amount is payable under paragraphs (a) of this section and the employee leaves any parent, husband, child or children who at the time of disablement were totally dependent upon the earnings of the employee, then a sum equal to four times the average annual earnings of the employee, but not less in any event than two thousand five hundred dollars, and not more in any event than four thousand dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amount payable on death.

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(c) If no amount is payable under paragraph (a) or (b) of this section and the employee leaves any parent or parents, child or children, who at the time of disablement were partially dependent upon the earnings of the employee, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not less in any event than one thousand dollars and not more in any event than three thousand seven hundred fifty dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(d) If no amount is payable under paragraphs (a), (b) or (c) of this section and the employee leaves any grandparent, grandchild or grandchildren or collateral heirs dependent at the time of the disablement to the employee upon his earnings to the extent of fifty percentum or more of total dependency, then such proportion of a sum equal to four times the average annual earnings of the employee as such dependency bears to total dependency, but not more in any event than three thousand seven hundred fifty dollars. Any compensation payments other than necessary medical, surgical or hospital fees or services shall be deducted in ascertaining the amounts payable on death.

(e) If no amount is payable under paragraphs (a), (b), (c) or (d) of this section, a sum not to exceed one hundred and fifty dollars for burial expenses to be paid by the employer to the undertaker or to the person or persons incurring the expense of burial.

Any person, corporation or organization who has paid or become liable for the payment of burial expenses of said deceased employee may in his or its own name institute proceedings before the Industrial Commission for the collection thereof.

(f) All compensation, except for burial expenses provided in this section to be paid in case disablement results in death, shall be paid in installments equal to the percentage of the average earnings as provided for in section 8 of this Act, at the same intervals at which the wages or earnings of the employees were paid; or if this shall not be feasible, then the installments shall be paid weekly: Provided, such compensation may be paid in a lump sum upon petition as provided in section 10 of this Act.

(g) The compensation to be paid for disablement which results in death, as provided in this section, shall be paid to the persons who form the basis for determining the amount of compensation to be paid by the employer, the respective shares to be in the proportion of their respective dependency at the time of the disablement on the earnings of the deceased; Provided, that the Industrial Commission or an arbitrator thereof may, in its or his discretion, order or award the payment to the parent or grandparent of a child for the latter's support the amount of compensation which but for such order or award would have been paid to such child as its share of the compensation payable, which order or award may be modified from time to time by the commission in its discretion with respect to the person to whom shall be paid the amount of said order or award remaining unpaid at the time of said modification.

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The payments of compensation by the employer in accordance with the order or award of the Industrial Commission shall discharge such employer from all further obligation as to such compensation.

In a case where any of the persons who would be entitled to compensation is living at any place outside of the United States, then payment shall be made to the personal representative of the deceased employee. The distribution by such personal representative to the persons entitled shall be made to such persons and in such manner as the commission shall order.

(h) 1. Whenever in paragraph (a) of this section a minimum of two thousand five hundred dollars is provided, subject to the provisions of paragraph (e) of Section 14 hereof, such minimum shall be increased in the following cases to the following amounts:

Three thousand dollars in case of one child under the age of 16 years at the time of the death of the employee.

Three thousand one hundred dollars in case of two children under the age of 16 years at the time of the death of employee.

Three thousand two hundred dollars in case of three or more children under the age of 16 years at the time of the death of the employee.

2. Whenever four times the average annual earnings of the deceased employee as provied in paragraph (a) of this section amounts to more than two thousand five hundred dollars and to less than four thousand dollars, subject to the provisions of paragraph (e) of Section 14 hereof, the amount so payable under said paragraph shall be increased as follows:

In case such employee left surviving him one child under the age of sixteen years the amount so payable shall be increased three hundred fifty dollars.

In case such employee left surviving him two children under the age of sixteen years the amount so payable shall be increased four hundred fifty dollars.

In case such employee left surviving him three or more children under the age of sixteen years the amount so payable shall be increased six hundred dollars.

3. Whenever in paragraph (a) of this section a maximum of four thousand dollars is provided, subject to the provisions of paragraph (e) of Section 14 hereof, such maximum shall be increased in the following cases to the following amounts:

Four thousand four hundred fifty dollars in case of one child under the age of sixteen years at the time of the death of the employee.

Four thousand eight hundred dollars in case of two children under the age of sixteen years at the time of the death of the employee.

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Five thousand five hundred dollars in case of three or more children under the age of sixteen years at the time of the death of the employee.

(i) In case the deceased employee was under sixteen years of age at the time of the last exposure and was then illegally employed, the amount of compensation payable under paragraphs (a), (b), (c), (d) and (e) of this section shall be increased fifty percentum. Provided, however, that nothing herein contained shall be construed to repeal or amend the provisions of an Act concerning child labor, approved June 26, 1917, as subsequently amended relating to the employment of minors under the age of sixteen years.

(j) Whenever the dependents of a deceased employee are aliens not residing in the United States or Canada, the amount of compensation payable shall be limited to the beneficiaries described in paragraphs (a), (b) and (c) of this section and shall be fifty per centum of the compensation provided in paragraphs (a), (b) and (c) of this section.

Section 8. Except as otherwise in this Act provided the compensation payable for disability not resulting in death shall be:

(a) If the period of temporary total disability from work lasts more than six working days, compensation equal to fifty per centum of the earnings, but not less than $7.50 nor more than $15.00 per week, beginning on the eighth day of such temporary total disability and continuing as long as the temporary total disability lasts, but not after the amount of compensation paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the disablement at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7: Provided, that in the case where the temporary total disability from work continues for a period of more than thirty days from the day of the disablement then compensation shall commence on the day after the disablement.

(b) If, after the disablement has occurred, the employee as a result thereof becomes partially disabled from pursuing the last line of employment in which he was engaged at or before the disablement, he shall receive compensation, subject to the limitations as to time and maximum amounts fixed in paragraphs (a) and (e) of this section, equal to fifty percentum of the difference between the average amount which he last earned at or before the disablement and the average amount which he is earning or is able to earn in some employment or business after the disablement.

(c) In case of complete disability, which renders the employee wholly and permanently incapable of work, compensation equal to fifty percentum of his earnings but not less than $7.50 nor more than $15.00 per week, commencing on the day after the disablement, and continuing until the amount paid equals the amount which would have been payable as a death benefit under paragraph (a), section 7, if the employee had died as a result of the disablement at the time thereof, leaving heirs surviving as provided in said paragraph (a), section 7, and thereafter a pension during life annually equal to 8 percentum, of the amount which would have been payable as a death benefit under paragraph (a),

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section 7, if the employee had died as a result of the disablement at the time thereof, leaving heirs surviving, as provided in said paragraph (a), section 7. Such pension shall be paid monthly. Provided, any employee who receives an award under this paragraph and afterwards returns to work or is able to do so, and who earns or is able to earn as much as before the disablement, payments under such award shall cease; if such employee returns to work, or is able to do so, and earns or is able to earn part but not as much as before the disablement, such award shall be modified so as to conform to an award under paragraph (b) of this section: Provided, further, that if such award is terminated or reduced under the provisions of this paragraph, such employee shall have the right at any time within one year after the date of such termination or reduction to file a petition with the commission for the purpose of determining whether any disability exists as a result of the condition which caused the original disablement, and the extent thereof.

(d) In case death occurs as a result of the disablement before the total of the payments made equals the amount payable as a death benefit, then in case the employee leaves any widow, child or children, parents, grandparents, or other lineal heirs, entitled to compensation under section 7, the difference between the compensation for death and the sum of the payments made to the employee, shall be paid to the beneficiaries of the deceased employee, and distributed as provided in paragraph (g) of section 7, but in no case shall the amount payable under this paragraph be less than $500.00.

(e) In no event shall the compensation to be paid exceed fifty percentum of the average weekly wage, or exceed $15.00 per week in amount; nor, except in case of complete disability, as defined above, shall any payments extend over a period of more than eight years from the date of the first disablement.

(f) All compensation provided for in paragraphs (a), (b) and (c) of this section, other than in case of pension for life, shall be paid in installments at the same intervals at which the wages or earnings of the employee were paid at the time of the disablement, or if this shall not be feasible, then the installments shall be paid weekly; all payments of compensation to be made not later than two weeks after the interval for which compensation is payable.

(g) 1. Wherever in this section there is a provision for fifty percentum, such percentum shall be increased five percentum for each child of the employee, including children who have been legally adopted, under 16 years of age at the time of the disablement to the employee until such percentum shall reach a maximum of sixty-five percentum.

2. Wherever in this section a weekly minimum of $7.50 is provided, such minimum shall be increased in the following cases to the following amounts:

$11.00 in case of an employee having one child under the age of 16 years at the time of the disablement to the employee;

$12.00 in case of an employee having two children under the age of 16 years at the time of the disablement to the employee;

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$13.00 in case of an employee having three children under the age of 16 years at the time of the disablement to the employee;

$14.00 in case of an employee having four or more children under the age of 16 years at the time of the disablement to the employee.

3. Wherever in this section a weekly maximum of $15.00 is provided, such maximum shall be increased in the following cases to the following amounts:

$16.00 in case of an employee with two children under the age of 16 years at the time of the disablement to the employee;

$18.00 in case of an employee with three children under the age of 16 years at the time of the disablement to the employee;

$20.00 in case of an employee with four or more children under the age of 16 years at the time of the disablement to the employee.

(h) In case the disabled employee was under sixteen years of age at the time of the last exposure, and was then illegally employed, the amount of compensation payable under paragraphs (a), (b) and (c) of this section shall be increased fifty per centum. Provided, however, that nothing herein contained shall be construed to repeal or amend the provisions of an Act concerning child labor, approved June 26, 1917, as subsequently amended relating to the employment of minors under the age of sixteen years.

Section 9. The average annual earnings shall be computed either in the employment at the time of the last exposure or in the last remunerative employment prior to or at the time of disablement, and whichever is the higher shall govern and whichever employment is used, the basis for computing the compensation provided for in sections 7 and 8 of this Act shall be as follows:

(a) The compensation shall be computed on the basis of the annual earnings which the employee received as salary, wages or earnings if in the employment of the same employer continuously during the year next preceding the last day of the last exposure of the last day of the last remunerative employment prior to or at disablement as the case may be.

(b) Employment by the same employer shall be taken to mean employment by the same employer in the grade in which the employee was employed on the last day of the last exposure or the last day of the last remunerative employment prior to or at disablement as the case may be, uninterrupted by absence from work due to illness or any other unavoidable cause.

(c) If the employee has not been engaged in the employment of the same employer for the full year immediately preceding the governing date, the compensation shall be computed according to the annual

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earnings which persons of the same class in the same employment and same location, (or if that be impracticable, of neighboring employment of the same kind) have earned during such period.

(d) As to employees in employments in which it is the custom to operate throughout the working days of the year, the annual earnings, if not otherwise determinable, shall be regarded as 300 times the average daily earnings in such computation.

(e) As to employees in employments in which it is the custom to operate for a part of the whole number of working days in each year, such number, if the annual earnings are not otherwise determinable, shall be used instead of 300 as a basis for computing the annual earnings: Provided, the minimum number of days which shall be used for the basis of the year's work shall be not less than 200.

(f) In the case of employees who earn either no wage or less than the earnings of adult day laborers in the same line of employment in that locality, the yearly wage shall be reckoned according to the average annual earnings of adults of the same class in the same (or if that is impracticable then of neighboring) employments.

(g) Earnings, for the purpose of this section, shall be based on the earnings for the number of hours commonly regarded as a day's work for that employment, and shall exclude overtime earnings. The earnings shall not include any sum which the employer has been accustomed to pay the employee to cover any special expense entailed on him by the nature of his employment.

(h) If, by the provisions of this Act, any employee, during any period, shall be entitled to compensation on account of each of two or more separate and distinct claims or rights of action, whether against the same or different employers and whether on account of the same or different occupational diseases, then and in that event, the aggregate weekly amount payable during such period shall not exceed the maximum weekly rate fixed in Section 8 of this Act applicable to the employee's status with reference to children during such period; and the method of arriving at such result shall be that in computing the amount payable during such period on any one of such claims, the weekly amount shall not exceed that sufficient, when added to the weekly amount or amounts payable during the same period on account of any claim or claims which accrued previously to the one being computed, to bring the aggregate of such weekly payments up to, but not over, such maximum.

(i) To determine the amount of compensation for each installment period, the amount per annum shall be ascertained pursuant hereto, and such amount divided by the number of installment periods per annum.

Section 10. Any employer or employee or beneficiary who shall desire to have such compensation, or any unpaid part thereof paid in a lump sum, may petition the Industrial Commission asking that such compensation be so paid, and if, upon proper notice to the interested parties and a proper showing made before such commission, or any member thereof, it appears to the best interest of the parties that such

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compensation be so paid, the commission may order the commutation of the compensation to an equivalent lump sum, which commutation shall be an amount which will equal the total sum of the probable future payments capitalized at their present value upon the basis of interest calculated at three per centum per annum with annual rests: Provided that no lump sum of any part or of all of the future installments of compensation shall be granted over the objection of any party liable to pay the same unless it appears reasonably certain that such objecting party will not be relieved of the obligation for any part of the installments sought to be lumped by reason of a change in the degree of disability or marital status; and further provided that where necessary, upon proper application being made, a guardian, conservator or administrator, as the case may be, may be appointed for any person under disability who may be entitled to any such compensation, and an employer bound by the terms of this Act and liable to pay such compensation, may petition for the appointment of the public administrator, or a conservator or a guardian, where no legal representative has been appointed or is acting for such party or parties so under disability.

Section 11. An employee entitled to receive disability payments, or who claims to be so entitled, or whose employer anticipates may make such claim, if requested by the employer must submit to examination for all the purposes and under all the conditions ~~and terms and~~ in all respects the same, and subject to the same consequences upon refusing to submit to or obstructing the examination, as is provided in section 12 of the Workmen's Compensation Act, all of the provisions of which are hereby adopted as part of this paragraph.

Section 12. (a) Any two medical members of the Industrial Commission shall ~~have the~~ right, at any time after a death in which it appears that an autopsy may disclose material evidence as to whether or not such death was due to an occupational disease, to require ~~an~~ autopsy at the expense of the party requesting same, and if such autopsy is so required such medical members shall designate a pathologist competent in such cases to perform the same, and shall give the surviving spouse or next of kin and the employer or his insurance carrier, if their identity and whereabouts can be reasonably ascertained, such reasonable notice of the time and place thereof as will afford a reasonable opportunity to have a representative present, who, if present shall be given a reasonable opportunity to witness such autopsy; and it shall be the duty of such pathologist so designated by such medical members to perform such autopsy as in his judgment the nature of the case indicates, and to immediately make a written report of all findings (including laboratory results, described as such, if any) material to the formation of an opinion regarding the cause of death, but no such opinion shall be contained in such report. Such report shall be placed on file by the Industrial Commission and shall be a public record of which said Commission shall furnish certified copies to interested parties on request.

(b) Where an autopsy has been performed at any time after death with the express or implied consent of any interested party, and without some opposing party, if known or reasonably ascertainable, having

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reasonable notice of and reasonable opportunity of witnessing the same, all evidence obtained by such autopsy shall be barred upon objection at any hearing, provided that this paragraph shall not apply to autopsies by a Coroner's physician in the discharge of his official duties.

Section 13. In the event of disability from an occupational disease, the employer shall provide reasonable medical treatment; but liability for such treatment shall not extend beyond sixty days from the date of disablement: Provided, however, that any two medical members of the Industrial Commission may direct a continuance of such treatment but only in cases where the facts show substantial prospects that by such continuance of treatment the disability of the employee so affected will be materially improved; provided, however, that in no event shall the employer's obligation for continued treatment extend beyond ninety days in addition to the first sixty days.

Section 14. (a) The furnishing by the employer of any medical treatment shall not be construed to admit liability on the part of the employer to pay compensation, and the furnishing of any such treatment by the employer shall not be construed as the payment of compensation. A payment or payments of compensation by the employer or his Insurance Carrier to a disabled employee prior to the filing of application for adjustment of claim shall not be construed against the employer as admitting liability to pay compensation.

(b) The compensation herein provided for disability from occupational disease shall be payable only in cases in which there are or have been objective symptoms or conditions of the occupational disease claimed and in which there are such symptoms or conditions of the disability claimed, not within the physical or mental control of the employee himself, and proven by competent evidence other than, or in corroboration of, the employee's testimony.

(c) No compensation shall be payable under this Act for any condition of physical or mental ill being, disability, disablement, or death for which compensation is payable on account of accidental injury under the Workmen's Compensation Act.

(d) No compensation shall be payable for an occupational disease if the employee, at the time of entering into the employment of the employer by whom the compensation would otherwise be payable, falsely represented himself in writing as not having previously been disabled or laid off because of such disease.

(e) No compensation for death from an occupational disease shall be payable to, for, or on account of, any person whose relationship to the deceased, upon which claim for compensation is based, arose subsequent to the occurrence of the first disablement, provided that this paragraph shall not bar the surviving children of the deceased by a wife to whom he was married at the time of the first disablement.

(f) Where an occupational disease is materially aggravated by any other disease, infirmity or injury, not itself compensable under this

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Act or where disability or death from any other cause, not itself compensable under this Act, is materially aggravated, prolonged, accelerated or in any wise materially contributed to by an occupational disease, the compensation payable shall be such proportion only of the compensation that would be payable if the occupational disease were the sole cause of the disability or death, as such occupational disease, as a causative factor, bears to all the causes of such disability or death; and such reduction in compensation shall be effected in case of temporary disability, either total or partial, by proportionately reducing the amount of each weekly or monthly payment; but in case of permanent disability, either total or partial, or in case of death, such reduction may be effected by proportionately reducing either the amount of each weekly or monthly payment or the total number of the payments whichever may seem for the best interest of the claimant in the particular case.

(g) An employer shall not be liable for any compensation for any occupational disease specified in Section 5 of this Act, unless such disease shall be peculiar and incident to the nature of an occupation or process in his employment in which the hazards of such disease actually exist, and to which hazards the employee is actually exposed in such employment and unless disablement or death results within one year after the last exposure to such disease in such employment, and, in case of death after disablement, unless such death follows continuous disability from such disease, commencing within the period specified herein, for which disability compensation has been paid or awarded or timely notice and claim given and made as provided in this Act, and results within seven years after such last exposure; provided that the period of one year so specified, in which the disablement or death must result after the last exposure shall be extended to three years in cases of silicosis and asbestosis.

(h) The date of accrual of the right of action for the compensation benefits in this Act provided shall be the date of the first disablement after the last exposure in the employ of the employer against whom claim is made. The employer liable for the benefits in this Act provided shall be the employer in whose employment the employee was last exposed to the hazard of the occupational disease claimed upon, regardless of the length of time of such last exposure; provided that an employee shall be deemed to have been exposed to the hazard of an occupational disease when for any length of time, however short, he works in an occupation or process to which such kind of occupational disease is peculiar and incident and in which employees continuing therein may contract such occupational disease in the course of time; provided further that in cases of silicosis or asbestosis the employer and only employer liable shall be the employer in whose employment the employee was last exposed for a period of thirty days or more. new addition

(i) Compensation shall not be payable for disability or death due to silicosis or asbestosis unless the employee has been exposed to the inhalation of free silica dust or asbestos dust over a period of not less than three years and has been employed in this State over a period of not less than two years immediately preceding his last exposure: Provided, however, that if the employee shall have been employed by the same employer during the whole of such three year period, and his last

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exposure occurred in this State, his right to compensation against such employer shall not be affected by the fact that he has been employed during any other part of such period outside of this State.

(j) If any employee shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery or shall refuse to submit to such medical, surgical, or hospital treatment as is provided by the employer and as is reasonably essential to promote his recovery, ~~any two medical members of the~~ commission may, in ~~their~~ its discretion, reduce or suspend the compensation of any such employee.

Section 15 (a) No proceedings for compensation under this Act shall be maintained unless notice has been given to the employer sought to be charged, of disablement arising from an occupational disease as soon as practicable after the date of the first disablement therefrom. No defect or inaccuracy of such notice shall be a bar to the maintenance of proceedings on arbitration or otherwise by the employee unless the employer proves that he is unduly prejudiced in such proceedings by such defect or inaccuracy. Notice of the disabling disease shall give the approximate date and place of the employment by the employer sought to be charged, and may be given orally or in writing; provided, no proceedings for compensation under this Act shall be maintained unless claim for compensation has been made within six months after the occurrence of the first disablement from the occupational disease, provided, further that in any case, unless application for compensation is filed with the Industrial Commission within one year after the date of such first disablement, or within one year after the date of the last payment of compensation, if any has been paid, the right to file such application shall be barred.

(b) The same provisions as are contained in the Workmen's Compensation Act respecting mental incompetents shall apply to mental incompetents with respect to this Act, provided, that no person, whether minor or adult shall be deemed mentally incompetent unless mentally incompetent in fact, and provided further that in death cases in which two or more persons are entitled to compensation, and any of them be mentally competent, the fact that another or others of them are not mentally competent shall in no way affect the running of, or applicability of, any time limitation, and the same shall apply and run as to all of them.

Section 16 (a) Proceedings for compensation hereunder and review thereof shall be had and maintained in the same manner and with like effect as is provided by the Workmen's Compensation Act except as in this Act otherwise expressly provided, and the Industrial Commission shall have jurisdiction over the operation and administration of all parts of this Act, and it shall have, exercise, perform and discharge the same rights, powers, and duties with reference hereto as said commission has with reference to the Workmen's Compensation Act, insofar as the same are applicable, and excepting as otherwise in this Act expressly provided.

(b) An agreement or award under this Act providing for compensation in installments may be reviewed within the same time limit and in

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the same manner, and under the same conditions and for the same purposes as is provided in paragraph (h) of section 19 of the Workmen's Compensation Act including the provision that the granting of a lump sum shall bar such review, but no agreement other than one approved by the Industrial Commission as a settlement contract shall be subject to such review.

(c) Any application for adjustment of claim under this Act filed with the Industrial Commission, shall state, in addition to whatever other information may be required by reasonable rule of the Industrial Commission: The particular occupational disease claimed upon; where, when and in whose employ and in what manner it is claimed the last exposure thereto occurred; when the disablement is claimed to have occurred; the name and last known address of each employer for whom the employee worked between the date of the last exposure and the date of disablement and the kind of work done at each place; the name and last known address of each doctor, other than any provided by the respondent-employer, who treated the employee between the date of the last exposure and the date of filing the application; in cases of silicosis or asbestosis, when, where and in whose employ the employee is claimed to have been exposed to the inhalation of free silica dust or asbestos dust for three years, and, in case of death, the date and place of same and the place of burial: And no respondent shall be forced to trial over objection until and unless the application contains or is amended to contain the information in this paragraph required, or so much thereof as the claimant or claimants can reasonably ascertain.

(d) Upon the filing of an application for adjustment of claim on account of occupational disease, it shall be the duty of any two medical members of the Commission to designate a licensed physician and surgeon, as a medical arbitrator, to hear and decide the cause and every issue therein, and in no such case shall there by any committee of arbitrators as is provided in the Workmen's Compensation Act. The medical arbitrator shall proceed in all respects the same as is provided in the Workmen's Compensation Act, except as otherwise in this Act provided.

Upon the designation of a medical arbitrator, he shall proceed to hear the cause, and if the claimant shall prove a prima facie case and if the evidence shall present a conflict on any material medical question or issue which a physical examination could or might assist in determining it shall be the duty of the medical arbitrator to make a clinical examination of the applicant and to cause to be made whatever x-ray films, laboratory tests, or like things, may not practicably be made by himself, and which in his judgment should be made, and to make a written report setting out the nature of the examination made and the objective findings, or absence thereof, on such examination, including the x-ray findings, laboratory tests, or other things he caused to be made or done, and including any medical opinion the he medical arbitrator is able to form, with reasonable medical certainty, ~~on any medical question in issue, but~~ based solely on such objective findings and not upon any history, statement, or subjective manifesta-

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tions in the course of such medical examination, and the said report and x-ray films, if any, shall be in evidence.

Each interested party shall, on request, be given the opportunity to have a representative present during the course of such examination by the medical arbitrator, which representative shall be given a reasonable opportunity to observe each part of such examination, and after the medical arbitrator has made his written report and before proofs are closed, any party may have such representative testify as to any variance between his own observation or findings in the course of the medical arbitrator's examination and those contained in such report.

The medical arbitrator shall, at the conclusion of the hearing, state in the record as evidence, any medical opinion he is able to form with reasonable medical certainty on any material medical question or issue, based upon all the evidence including his own report and the findings therein.

After the closing of the arbitration hearing, the medical arbitrator shall make and file with the Industrial Commission a decision deciding every issue, both medical and non-medical. The arbitrator's decision shall contain specific findings covering the points essential to the right to compensation in the particular case and including the following: (a) Whether the employee was in fact, within one year (or three years as the case may be) prior to the disablement, in the employ of the respondent-employer; and, if so, the duration of such employment and whether or not such employment was subject to this Act, (b) The occupation or occupations, process or processes, in which the employee was engaged during such employment and the approximate periods of work in each such occupation or process, (c) The previous and subsequent employments of such employee and the duration thereof and the exposure therein to hazards of the occupational disease in question, (d) The average earnings of the employee at the time of his last exposure to the hazards of the occupational disease in the employment of the respondent-employer, and also his average earnings in his last remunerative employment before his disablement, (e) The date of the occurrence of the first disablement after the last exposure, (f) The date of last exposure in the employment with the respondent-employer; and, if the employee is no longer working with the respondent-employer, the date upon which said employee ceased so to work; and, if the employee has died, the date and place of such death and the place of interment of the body.

(e) Where the decision of the medical arbitrator is reviewed, any additional evidence adduced shall be heard by a medical member of the Industrial Commission, and on every review, if it appears to the medical member that a medical examination at the time of such review might assist in determining any medical question or issue presented by the record or additional evidence, if any, such medical member shall proceed to make such medical examination, the same as hereinbefore described with respect to examination by medical arbitrators, and shall make the same kind of a written report, which likewise, together with

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x-ray films made, if any, shall be in evidence and the parties shall have the same right to have their respective representatives at such examination and to have them testify as to any variance from the findings in such report.

Before the case is decided on review such medical member shall state into the record as evidence any opinion he is able to form with reasonable medical certainty on every material medical question or issue, based upon all the evidence on arbitration, including the medical arbitrator's report of examination, if any, and all the additional evidence on review, if any, and including the medical member's report and findings therein, if any.

Every decision on review in cases arising hereunder shall be with the concurrence of at least two medical members as to all medical questions or issues involved, and with the concurrence of at least three non-medical members on all other questions; and if such decision be not otherwise arrived at the following method shall be employed; The medical members or any two thereof shall first make and place on file their findings on every medical question or issue material to a decision in the case and thereafter the non-medical members shall make a complete decision in the case, but in so doing shall be guided and bound by said findings of said medical members, a copy of which findings shall be incorporated in or attached to such complete decision.

Section 17. Any employer against whom liability may exist for compensation under this Act and his insurance carrier if any, shall, with respect to this Act, be subject to the same provisions as are contained in sections 25, 26, 27, 28, 29, 30 and 30½ of the Workmen's Compensation Act, provided that the insurance or security in force to cover liability under this Act shall be separate and distinct from the insurance or security under the Workmen's Compensation Act, and any insurance contract covering liability under either Act need not cover any liability under the other, provided further that no policy of insurance shall be deemed to cover cases brought under this Act by the employer's election pursuant to paragraph (b) of Section 3 of this Act unless the policy so provides; and, provided, further that in applying the provisions of said section 30 of the Workmen's Compensation Act, the reports therein mentioned shall relate to disablements from occupational disease.

Section 18. When the obligation of the employer under this Act is secured by insurance, all the rights and privileges of the employer under the provisions of this Act shall inure to the benefit of the insurance carrier, and in any case in which there is a dispute as to insurance coverage, the supposed insurance carrier shall have the right to participate as an interested party in any proceedings had, whether made a party or not, without such participation being construed as an admission of coverage, provided that where the supposed insurance carrier is not made a party respondent, the claimant or claimants may validly object to its appearing in the cause, in which case the claimant or claimants may not thereafter at any time maintain any proceedings to join such carrier in the award, or to otherwise hold it liable.

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Section 19. In any case where there has been any unreasonable or vexatious delay of payment or intentional underpayment of compensation, or proceedings have been instituted or carried on by the one liable to pay the compensation, which do not present a real controversy, but are merely frivolous or for delay, then the commission may award compensation additional to that otherwise payable under this Act equal to fifty per centum of the amount payable at the time of such award.

Section 20. No payment, claim, award or decision under this Act shall be assignable or subject to any lien, attachment or garnishment, or be held liable in any way for any lien, debt, penalty or damages. And the compensation allowed by any award or decision of the commission shall be entitled to a preference over the unsecured debts of the employer, wages excepted, contracted after the date of the disablement of an employee. A decision or award of the Industrial Commission against an employer for compensation under this Act, or a written agreement by an employer to pay such compensation shall, upon the filing of a certified copy of the decision or said agreement, ~~as the case may be,~~ with the recorder of deeds of the county, constitute a lien upon all property of the employer within said county, paramount to all other claims or liens, except mortgages, trust deeds, ~~or for~~ wages ~~or~~ taxes, and such liens may be enforced in the manner provided for the foreclosure of mortgages under the laws of this State. Any right to receive compensation hereunder shall be extinguished by the death of the person or persons entitled thereto, subject to the provisions of this Act relative to compensation for death received in the course of employment.

Section 21. No employee, personal representative, or beneficiary shall have power to waive any of the provisions of this Act in regard to the amount of compensation which may be payable to such employee, personal representative or beneficiary hereunder except ~~after~~ approval by the Industrial Commission.

Section 22. Wherever in this Act any reference is made to the Workmen's Compensation Act, such reference is intended and shall be taken to mean the Workmen's Compensation Act ~~as amended~~ to January 1, 1934 only, and no amendment, ~~modification, change~~ or repeal of said Workmen's Compensation Act after January 1, 1934 shall be deemed to be herein referred to or adopted nor ~~to~~ in any way affect this Act ~~or any of the rights, duties, liabilities or exemptions of any party or the procedure under this Act.~~

Section 23. Any wilful neglect, refusal or failure to ~~do the things required to be done by any section, clause,~~ or provision of this Act, ~~on the part of the persons herein required to do them, or~~ any violation of any of the provisions or requirements hereof, or any attempt to obstruct or interfere with any court officer, or any other person charged with the duty of administering or enforcing the provisions of ~~this Act~~, shall be deemed a misdemeanor, punishable by a fine of not less than $10.00 nor more than $500.00, ~~at the discretion of the court.~~

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Section 24. This Act may be cited as the Workmen's Occupational Diseases Act.

Section 25. That an Act entitled "An Act to promote public health by protecting certain employees in this State from the dangers of occupational diseases, and providing for the enforcement thereof" approved May 26, 1911, in force July 1, 1911, as subsequently amended, be and the same is hereby repealed.

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