EMPLOYERS' LIABILITY
COMMISSION REPORT

REPORT

TO THE

GOVERNOR OF NEW JERSEY

BY THE

EMPLOYERS' LIABILITY COMMISSION

OF THE

OPERATION

OF THE

EMPLOYERS' LIABILITY ACT

TO DATE OF MARCH 19

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TRENTON, N. J.
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Report to Governor.

STATE OF NEW JERSEY,
EMPLOYERS' LIABILITY COMMISSION.
STATE HOUSE, TRENTON, March 19th, 1912.

DEAR SIR—The Employers' Liability Commission, appointed by you in accordance with chapter 241 of the laws of 1911, has the honor to report as follows:

The duties of the Commission, as prescribed by the above-mentioned law, are as follows:

> "It shall be the duty of the Commission to observe in detail, so far as possible, the operations throughout the State, of the recent act of the Legislature, commonly known as 'The Employers' Liability Act,' entitled 'An Act prescribing the liability of an employer to make compensation for injuries received by an employe in the course of employment, and regulating procedure for the determination of liability and compensation thereunder,' approved April fourth, one thousand nine hundred and eleven."

The law became effective July 4th, 1911, and the members of the Commission were appointed August 23d, 1911.

Enough time has, therefore, not elapsed for the accumulation of sufficient data to serve as a basis for final conclusions as to the merits and demerits of the law.

Through the courtesy of Commissioner Bryant, of the Labor Department, the Commission has established headquarters in his office in the State House, and has received valuable aid from him, his assistants and from his records.

The Secretary has communicated with every manufacturing establishment in the State, in number about forty-five hundred (4,500), supplying each with blank forms on which to make re-

ports of accidents involving injuries to employes. (For form of this blank see appendix.) By this means we have been able to secure the following classification of accidents occurring principally in factories, which have happened since the law became operative, July 4th, 1911.

This classification includes reports received up until February 10th, 1912.

Total number of reports received,	2,047
Number of accidents occurring under Section one,	239
Being of the total number,	11.6%
Number of accidents occurring under Section two,	1,808
Being of the total,	88.4%
Number of fatal accidents involving dependents,	13
Of which cases compensation is being furnished for,	11
Number of fatal accidents without dependents,	14
Of which cases last sickness and burial expenses have been met for,	12
Number of injuries reported as permanent,	85
Number reported as temporary disabilities,	1,659
Trivial cases,	974
Cases reported as settled by appeal to the Judge of a Court of Common Pleas,	10
Number of cases appearing to be entitled to medical aid,	800
Cases receiving such medical aid,	787
Being of the total,	98%
Cases appearing by the reports to be entitled to weekly compensation,	634
Number that have received compensation,	598
Being of the total,	94%

We have found that the principal criticism of the law is due to the fact that it does not exclude domestic servants and agricultural laborers from its provisions.

An amendment, making such exception, has been introduced in the present Legislature, and members of the Commission have appeared before the committee to which it was referred, to protest against its passage. This feature was carefully considered by the Commission in framing the present law, and it was decided that such an exception would be unwise for the following reasons:

First—Because we are advised by our attorneys that any such classification would probably be considered by the courts as arbitrary and unreasonable, and, therefore, unconstitutional.

Second—Because there does not seem to be any reason why household servants, who, with few exceptions, are women, are not entitled to the same protection from becoming public charges as are their brothers and sisters in the factories and stores.

Third—As to agricultural laborers, there would seem to be even less reason for their exclusion, when you consider the fact that German statistics, which are the only really reliable ones available, show conclusively that exclusive of those occupations which are obviously dangerous, such as the manufacture and use of explosives, etc., farm labor is really one of the most hazardous occupations, being liable to all the hazards incident to the use of farm machinery, and also to the dangers arising from the use and care of animals. Unless, therefore, the State takes the position that farm laborers as a class are not worthy of the same protection as other citizens, we cannot see any reason for excluding them from the operation of the law.

Fourth—If any householder, or farmer, desires to escape the payment for possible injuries as provided in section II of the law, he has only to serve a written notice to that effect on his employe, in which case he will only be liable under section I, in case his own, or his lawfully imputed, negligence is "the natural and proximate cause of the injury."

The greatly increased rates for liability insurance which were quoted by the insurance companies immediately on the enactment of the present law, have been another cause for great dissatisfaction on the part of employers, especially the small ones.

Undoubtedly the insurance companies are justified in making some advance in rates, as their liabality has been very much increased. If this were not so, the act would have failed to accomplish one of its principal functions, *i. e.*, the increase of payments to the injured employes. As against this increased liability, however, there must be a decreased expense, due to the settlement of most of the cases through the automatic working of the law, thus avoiding expensive litigation.

The Commission does not feel warranted in bringing a direct charge of the establishing of excessive rates against the insurance companies, for the following reasons:

First—We do not believe that there exists to-day sufficient reliable data on which to base scientific rates; nor can we hope to have such data until the law has been in operation for several years. In the meantime, the insurance companies are only exercising ordinary business prudence in making rates high enough to prevent loss.

Second—A deliberate attempt to establish prohibitory rates would be business suicide on their part, unless they hoped by such means to compel a repeal of the law and return to old conditions. We have too much respect for their intelligence to credit any such theory.

The Commission believes that the remedy for the present high cost of insurance lies in the encouragement of the organization of mutual insurance companies, to be conducted along the same lines as those which have been so conspicuously successful in the case of the New England Factory Mutual Insurance Companies, which have been operating for the past sixty years.

The first purpose of these companies has been to prevent fires. They not only advise their members how to prevent fires by methods of construction and maintenance, but they refuse to admit to membership any factory which will not conform to their high standards. The result has been a reduction of rates to a merely nominal amount. We believe that the same methods can be used by companies organized to insure against injury liability, and that such companies will not only help greatly to reduce the number of accidents, but will offer to employers the most economical and efficient means of insuring against such accidents as are inevitable, even where the utmost care is exercised.

The Commission has, therefore, after consultation with the Commissioner of Banking and Insurance, recommended the enactment of an amendment to the insurance laws, with a view to providing this remedy for employers. (Senate No. 4, introduced by Mr. Edge.)

The Commission has recognized from the beginning that the one weak point in the present law has been the fact that, in the last analysis, the payment of the compensation to the injured employe, or to surviving beneficiaries, is dependent on the continued

solvency of the employer. In view of the large percentage of employers who at some period of their business careers become insolvent, and the long period over which payments may be extended, this is a most serious defect. The Commission is giving careful consideration to this problem, and may later recommend some additional legislation.

In order to secure reliable data, and at the same time prevent the duplication of reports required from employers, the Commission recommended the enactment of a law (Senate No. 46) requiring all reports of accidents to employes to be made to the Department of Labor and imposing proper penalties for failure to do so. A bill has also been introduced at the suggestion of the Commission, requiring clerks of courts to report to the same department all settlements made under the law.

As an evidence of the widespread interest in the subject of Workmen's Compensation, and the estimation in which the New Jersey law is held by those who are making a careful study of the subject, the following articles may be of interest:

From the Monthly Bulletin of the Fidelity and Casualty Co. of New York, dated March, 1912.

WORKMEN'S COMPENSATION.

"In a period of transition it is useful to note occasionally what has been accomplished by the efforts so far, and to endeavor to deduce some conclusions that may serve as a guide to further efforts.

"It may be regarded as a settled fact that the workmen's compensation system of compensating workmen for injuries received in their employment will sooner or later be substituted in every State for the employers' liability system. The latter stands condemned by justice and humanity. In addition, it involves great economic waste. Workmen's compensation for accidents, regardless of fault, is a "decreed" thing. The history of Europe will be repeated in the United States.

"The States that have essayed to establish the workmen's compensation system of compensating workmen for accidents have approached the problem from various angles. Which of these experiments is most successful, defining by success the acceptance of the workmen's compensation system by practically all employers? New York, Washington, New Jersey, Nevada, Ohio, California, Wisconsin, Kansas, New Hampshire, Illinois and Massachusetts have all enacted workmen's compensation laws. Which of these is most worthy of being adopted by other States?

"The underwriters of a large liability insurance company doing business throughout the country will no doubt be considered to possess opinions enti-

tled to weight. They are in contact with the situation in every State, and have facilities for learning just how each law is working out.

"It is the judgment of the underwriters of this company that New Jersey has come nearer to solving the problem than any other State. It has accomplished this result by simple means—first, by providing that the employer and employes shall be presumed to have elected to come under the workmen's compensation section of the law, if they do not give notice to each other that they do not accept it; and

"Second, by making the cost of the benefits under the workmen's compensation section less than the cost of the settlements under the employers' liability section. It has thus gotten around the constitutional difficulty by making the law optional, and has secured a practical law by making it simple and easily workable, and pitching the benefits at such point that employers will prefer to pay them rather than assume the risks of the employers' liability system.

"It is believed that fully eighty to ninety per cent. of all employers in New Jersey have come under the workmen's compensation section of the law. No other State has attained the success of New Jersey."

From the New York Times, dated Albany, March 15th, 1912.

"A new employes' compensation bill was introduced to-day by Senator Wainwright and Assemblyman Phillips. It is similar to the act which was passed two years ago compelling employers in dangerous trades to comply with its provisions. This act was declared to be unconstitutional, and by making compliance permissive in the new measure, it is declared that the constitutional objection is removed.

"The bill introduced to-day is not limited to dangerous occupations. It provides that unless an employer notifies his employes that he elects not to be subject to the law, he shall become subject to it. Various rates of compensation are fixed for each of several kinds of injuries, and compensation to dependents in case of death by accident is also provided for. Disputes as to the amount of compensation are to be settled by arbitration, and the compensation of lawyers who may be employed in such disputes is fixed by the law.

"The measure is modeled upon the New Jersey act, and was framed at a conference in which W. H. Hotchkiss, P. Tecumseh Sherman, Gilbert E. Roe, of the Peoples Institute of New York, and Vice-President Frank E. Law, of the Fidelity and Casualty Company, took part."

From the New York Journal of Commerce.

"What is considered by casualty insurance men to have been one of the most important meetings which has yet been held to discuss workmen's compensation occurred last Saturday at the offices of the United States Casualty Company. A bill for immediate introduction in the New York Legislature was practically agreed upon, and when it is finally drafted it is believed that it will embody the best ideas upon the subject by students of workmen's compensation, and that it will be so designed as to meet the restrictions imposed by the constitution of this State. In general design it will follow the New Jersey law, which has been in effect since July 4th of last year.

"Present at the meeting was George Sutherland, United States Senator from Utah, head of the congressional commission, which after a number of hearings drew up the workmen's compensation bill for corporations engaged in interstate commerce, and which has been warmly approved by President Taft.

"The most practicable bill, in view of all the facts, it was decided, would be one modeled upon the New Jersey compensation law, which casualty men have decided is working well. This act fixes the limit of compensation, both in case of death or disability. It provides that every contract of employment will contain an implied agreement to accept compensation, both on the part of the employer and the employed, and this contract is binding except in case of notice in writing to the contrary."

The Commission now has under consideration a number of proposed amendments which have been suggested by the members as a result of further study of the law and its operations. In addition, some valuable suggestions have been received from some of the judges as a result of their experience in adjusting cases under the law. Suggestions have also come to us from other sources, all of which are receiving careful attention.

All of these proposed amendments, however, are of a minor character, with one exception, *i. e.,* the proposition to exclude domestic servants and agricultural laborers from the operation of the law, as mentioned above.

While some of these amendments are meritorious and will probably receive the endorsement of the Commission, we feel that it would be for the public interest to defer any action until the next session of the Legislature, at which time we hope to present a comprehensive report which will include recommendations of such amendments as a further experience may suggest.

We enclose herewith a statement of expenditures.

Rspectfully submitted,

WILLIAM B. DICKSON, *President,*
SAMUEL BOTTERILL,
J. WILLIAM CLARK,
JOHN T. COSGROVE,
WALTER E. EDGE,
EDWARD K. MILLS.

HON. WOODROW WILSON,
Governor of New Jersey,
Trenton, N. J.

WILLIAM E. STUBBS,
Secretary.