Workmen's Compensation Act—Farmers.

A farmer may come within the provisions of the act by filing with the Board the joint election of himself and his employes to be bound by and subject to the provisions of the Act.

May 7, 1917.

Industrial Accident Board,
Helena, Montana.

Gentlemen:

You have submitted to me the question of whether or not a farmer can be subject to the provisions of Plan 3 of the Workmen's Compensation Act.

Section 3 (a) and 3 (b) of the Act, Chapter 96 of the 1915 Session Laws are as follows:

> "Section 3. (a) In an action to recover damages for personal injuries sustained by an employe in the course of his employment, or for death resulting from personal injuries sustained, it shall not be a defense; (1) That the employe was negligent, unless such negligence was willful; (2) That the

injury was caused by the negligence of a fellow employe; (3) That the employe had assumed the risks inherent in, incident to, or arising out of his employment, or arising from the failure of the employer to provide and maintain a reasonably safe place to work, or reasonably safe tools, or appliances."

"Section 3 (b). The provisions of Section 3 (a) shall not apply to actions to recover damages for personal injuries sustained by household or domestic servants, **farm or other laborers engaged in agricultural pursuits,** or persons whose employment is of a casual nature."

Section 4 (a) provides that:

"This Act is intended to apply to all inherently hazardous works and occupations within this State, and it is the intention to embrace all thereof in Sections 4 (b), 4 (c), 4 (d), and 4 (e), and the works and occupations enumerated in said sections are hereby declared to be hazardous."

The title of the Act is in part as follows: "An Act providing for the protection and safety of workmen in all places of employment and for the inspection and regulation of places of employment in all inherently hazardous works and occupations." From the foregoing it will be noted that it was not the intention of this act to include farmers. The Act was intended to apply only to such employments as are considered hazardous, and all of the works and occupations which are considered hazardous are enumerated in Section 4 (b), 4 (c), 4 (d) and 4 (e) of the Act.

But Class Twenty-seven of Section 40 (a) is as follows:

"Any employer and his employes engaged in non-hazardous work or employment by **their joint election,** filed with and approved by the Board, may accept the provisions of Compensation Plan Number Three. In such event, such employer and employes shall be known as Class Twenty-seven, the rate of assessment in which shall be ONE-HALF OF ONE PERCENTUM."

In Iowa, farmers can make the Act a part of their contract with their hired help, and then insure their liability under such contract. Likewise the Michigan Act does not exclude farmers from accepting the provisions of the law, but exempts them from its operation merely in the sense that they suffer no harm by not coming under it. See Honnold on Workmen's Compensation, Section 59.

In the very recent Michigan case of Shaffer v. Parke Davis & Company, 159 N. W. at page 305, we find the following language:

"The growing of grass and grain and the raising and care of stock are the ordinary uses to which a farm is put, and the work of raising, tilling, and harvesting the grain and caring for the stock is ordinary farm labor. Any man employed to work on a farm, and to perform the work ordinarily done there, is a farm laborer. * * *

"The fact that claimant was a farm laborer, however, would not debar him from the right to compensation if respondent had elected to come under the statute as to such laborers.

There is nothing in the act excluding a farmer or a farm laborer from the benefits of its provisions. This is the construction given by the Supreme Court of Massachusetts to a similar statute. Keaney's Case, 217 Mass. 5, 104 N. E. 438. * * *"

In the Massachusetts case above cited, Keaney's Case, 217 Mass. on pages 7 and 8, 104 N. E. 438, Chief Justice Rugg says as follows:

"The workmen's compensation Act was not intended to confer its advantages upon farm laborers, or to impose its burdens upon farmers. * * * The legislative policy of exempting them from statutory benefits and liabilities established in addition to those of the common law, disclosed in the employers' liability act, * * * has been continued in the workmen's compensation act. A farmer employing laborers in agriculture suffers no harm in not undertaking to become a subscriber under the workmen's compensation act. Hence, it is apparent that a farmer who chooses to avail himself of its terms and thereby to confer the boon of its protection upon his employes, does so on other grounds than those which might actuate the manufacturer or other employer of labor. There is much strength in the arguments drawn from the definition 'subscriber' in Part V, Sec. 2, and of the requirements imposed upon subscribers by Part IV, Sections 20 and 21, that if one becomes a subscriber at all or in any respect, he must be subject fully and without reservation or exception to all the provisions of the act. * * *

"The act is a practical measure designed for use among a practical people. There appears to be no reason for saying that a farmer may not adopt it if he desires. Any contract of insurance made by him under its terms is valid and enforceable. * * *"

Section 1 of the Workmen's Compensation Act of Illinois provides that any employer may elect to provide and pay compensation for accidental injuries sustained by employes arising in the course of employment, and thereby relieve himself from all other liability. In the case of Uphoff v. Industrial Board, 271 Ill. at 316, 111 N. E. 128, the Court says:

"Manifestly, * * * some employers were not intended to be included in the act unless they elected so to be. Clearly, under the quoted sections, read in connection with the remainder of the act, farm laborers engaged in general farming would not be covered by the act unless the farmer elected to accept the act under the provisions of Section 1."

The special counsel of the Iowa Industrial Commissioner, in an opinion dated September 13th, 1915, wrote in part as follows:

"However, there can be no objection to the farmer and his farm hand including in the contract of employment a special term providing in effect that the liability of the farmer to his farm hand for all injuries sustained would be gov-

erned, controlled and limited by the terms and conditions set forth in the chapter of the law referred to above."

In view of the provisions of Class Twenty-seven of Section 40 (a) of our Act that any employer and his employes, engaged in any non-hazordous work, by their joint election, filed with and approved by the Board may accept the provisions of Compensation Plan No. 3, and the above authorities, it would appear to me that any farmer in the State of Montana may come within the provisions of our Workmen's Compensation Act by filing with the Industrial Accident Board the joint election of such farmer and his employes to be bound by and subject to the provisions of the Act.

Respectfully,
S. C. FORD,
Attorney General.