

HD

8051

.B4

1937b

Copy 2

LIBRARY OF CONGRESS



00017946055



Class HD8051

Book B4

1937

copy 2

Union Calendar No. 535

75TH CONGRESS }
1st Session }

HOUSE OF REPRESENTATIVES

{ REPORT
No. 1452

FAIR LABOR STANDARDS ACT

AUGUST 6, 1937.—Committed to the Committee of the Whole House on the state of the Union and ordered to be printed

Mrs. NORTON, from the ^{U. S. Congress, House} Committee on Labor, submitted the following

REPORT

[To accompany S. 2475]

The Committee on Labor, to whom was referred the bill (S. 2475) to provide for the establishment of fair labor standards in employments in and affecting interstate commerce, and for other purposes, having considered the same, report favorably thereon and recommend that the bill do pass with the following amendments:

Page 1, line 3, after the word "the" insert the words "Black-Connery".

Page 3, line 22, after the word "capacity" insert the words "as outside salesmen".

Page 4, line 7, strike out beginning with the comma down through and including the word "apply" on page 4, line 9, and insert in lieu thereof a colon and the following:

Provided, however, That the wage provisions of this Act shall apply.

Page 4, line 20, strike out the word "ordinarily".

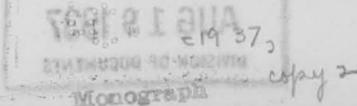
Page 4, line 22, insert a new sentence to read as follows:

Independent contractors and their employees engaged in transporting farm products from farm to market are not persons employed in agriculture.

Page 5, between lines 4 and 5, insert a new paragraph to be numbered "(10)" and to read as follows:

(10) "Oppressive child labor" means a condition of employment under which (A) any employee (as defined in this Act to exclude employees in agriculture) under the age of sixteen years is employed by an employer (other than a parent or a person standing in place of a parent) in any occupation, or (B) any such employee between the ages of sixteen and eighteen years is employed by an employer (other than a parent or a person standing in place of a parent) in any occupation which the Chief of the Children's Bureau in the Department of Labor shall from time to time by order declare to be particularly hazardous for the employment of such children or detrimental to their health or well-being; but oppressive child labor shall not be deemed to exist by virtue of the employment in any occupation of any person with respect to whom the employer shall have on file a certificate issued and held pursuant to the regulation of the Chief of

37-26882



269744 X
 the Children's Bureau certifying that such person is above the oppressive child-labor age. The Chief of the Children's Bureau shall provide by regulation or by order that the employment of employees under the age of sixteen years in any occupation shall not be deemed to constitute oppressive child labor if and to the extent that the Chief of the Children's Bureau determines that such employment is confined to periods which will not interfere with their schooling and to conditions which will not interfere with their health and well-being.

Page 5, line 8, strike out the period and insert a semicolon and the following:

or (C) oppressive child labor exists; or (D) women or minors are employed between the hours of midnight and six o'clock antemeridan.

Page 5, line 5, strike out the numerals "(10)" and insert the numerals "(11)".

Page 5, line 9, strike out the numerals "(11)" and insert the numerals "(12)".

Page 5, line 12, strike out the period and insert a semicolon and the following: "or (C) no oppressive child labor exists".

Page 5, line 13, strike out the numerals "(12)" and insert the numerals "(13)".

Page 5, line 15, strike out the numerals "(13)" and insert the numerals "(14)".

Page 5, line 22, strike out the numerals "(14)" and insert the numerals "(15)".

Page 5, line 24, strike out the period and insert a comma and the following:

or any goods produced in whole or in part by convicts or prisoners except convicts or prisoners on parole or on probation.

Page 6, line 1, strike out the numerals "(15)" and insert the numerals "(16)".

Page 6, line 4, strike out the numerals "(16)" and insert the numerals "(17)".

Page 6, lines 5 and 6, strike out the words "in any State".

Page 6, line 11, strike out the comma and insert a period and delete the words "in any State".

Page 6, line 12, strike out the numerals "(17)" and insert the numerals "(18)".

Page 6, line 15, strike out the numerals "(18)" and insert the numerals "(19)".

Page 6, line 20, strike out the numerals "(19)" and insert the numerals "(20)".

Page 7, insert between the lines 9 and 10 a new subsection to be designated as subsection "(c)" and to read as follows:

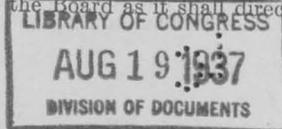
(c) All wage and hour regulations under the provisions of this Act shall apply to workers without regard to sex.

Page 7, line 15, strike out beginning with the word "in" down through and including the period on page 7, line 16, and insert the following:

one shall be from the northeast, one from the northwest, one from the southeast, one from the southwest, and one from the central part of the United States and one of such members shall be a representative of employers and one shall be a representative of employees.

Page 7, line 25, insert a new sentence to read as follows:

The Board shall appoint a Director for each State, Territory, and the District of Columbia to serve the Board as it shall direct.



12/31/37

HD 8051
B 4
1937 &
copy 2

Page 8, line 13, strike out beginning with the word "The" down through and including the word "States" on page 8, line 19.

Page 8, line 21, strike out the word "other".

Page 9, line 2, strike out beginning with the word "Attorneys" down through and including the word "court" on page 9, line 4, and insert in lieu thereof the following:

In all litigation the Board shall be represented by the Attorney General or by such attorney or attorneys as he may designate.

Page 9, line 10, strike out beginning with the letter "(e)" down through and including the word "Senate" on page 9, line 12.

Page 9, line 13, strike out the letter "(f)" and insert the letter "(e)".

Page 9, line 20, strike out the letter "(g)" and insert the letter "(f)".

Page 9, line 20, insert after the word "annually" the words "in January".

Page 12, line 4, strike out beginning with the word "where" down through and including the semicolon on page 12, line 5, and insert the following: "the relative cost of transporting goods from points or production to consuming markets;"

Page 12, line 15, strike out the word "and".

Page 12, line 19, strike out the period and insert a semicolon and the following:

and (7) differences in unit costs of manufacturing occasioned by varying local natural resources, operating conditions, or other factors entering into the cost of production.

Page 13, line 15, strike out the words "and baling" and insert in lieu thereof a comma and the words "compressing and storing".

Page 13, line 15, after the word "cotton" insert the words "or with processing of cottonseed".

Page 13, line 25, strike out the words "the Farm Credit Act of 1933" and insert in lieu thereof the words—

section 15, as amended, of the Agricultural Marketing Act: *Provided further*, That for the purpose of maintaining the health, efficiency and general well-being of the employees affected, it is the declared policy of this Act to discourage employment of persons between the hours of midnight and 6 o'clock antemeridian in those industries or occupations which do not require continuous-process operation, and persons employed in such industries or occupations between the hours of midnight and 6 o'clock antemeridian shall be paid a rate of not less than one and one-half times the rate established pursuant to subsection (b) of this section.

Page 15, line 2, between the numeral "5" and the word "Nothing" insert the letter "(a)".

Page 15, between the lines 16 and 17, insert three new paragraphs to be designated as "(b)", "(c)", and "(d)" and to read as follows:

(b) A labor-standard order establishing minimum wages or a maximum workweek for any occupation shall be made only if the Board finds that collective-bargaining agreements in respect to such minimum wages or maximum hours do not cover a substantial portion of the employees in such occupation, or that existing facilities for collective bargaining in such occupation are inadequate or ineffective to accomplish the purposes of this Act.

(c) A labor-standard order covering any occupation shall not establish for any locality in which such occupation is carried on a minimum wage which is lower or a maximum workweek which is longer than the minimum wage or maximum workweek prevailing for like work done under substantially like conditions in such occupation in such locality, unless the minimum wage established by such order is the highest wage or the maximum workweek is the shortest workweek that the Board is authorized to establish under this Act.

(d) The minimum wages and maximum workweek established by collective-bargaining agreements in any occupation shall be prima-facie evidence of the

appropriate minimum wage and maximum workweek to be established by the Board for like work done under substantially like conditions.

Page 16, line 22, insert a comma after the word "learners".

Page 16, line 23, insert the word "of" before the word "apprentices", and after the word "apprentices" insert the following: "under special certificates as issued pursuant to regulations of the Department of Labor,".

Page 17, in line 3 and in line 5, strike out the word "licenses" and insert the word "certificates".

Page 19, line 1, strike out beginning with the word "The" down through and including the word "section" on page 19, line 19, and insert in lieu thereof the following:

The United States Tariff Commission upon request of the President or upon resolution of either or both Houses of Congress or if imports are substantial and increasing in ratio to domestic production and if in the judgment of the Commission there is good and sufficient reason therefor, then, upon its own motion or upon the request of the Board or upon application of any interested party, shall investigate the differences in the costs of production of any domestic article and of any like or similar foreign article resulting from the operation of this Act, and shall recommend to the President such an increase (within the limits of section 336 of the Tariff Act of 1930) in the duty upon imports of the said foreign article, or such a limitation in the total quantity permitted entry, or entry without increase in duty, as it may find necessary to equalize the said differences in cost and to maintain the standards established pursuant to this Act. In the case of an article on the free list in the Tariff Act of 1930, it shall recommend, if required for the purposes of this section, a limitation on the total quantity permitted entry. The President shall by proclamation approve and cause to be put into effect the recommendations of the Commission if, in his judgment, they are warranted by the facts ascertained in the Commission's investigation.

(d) All provisions of title III, part II, of the Tariff Act of 1930, applicable with respect to investigations, reports, and proclamations under section 336 of the said Tariff Act, shall, insofar as they are not inconsistent with this section, be applicable with respect to investigations under this section. Nothing in this section shall be construed as permitting action in violation of any international obligation of the United States. In recommending any limitation of the quantity permitted entry, or entry without an increase in duty, the Commission, if it finds it necessary to enforce such limitations or to carry out any of the provisions of this section, shall recommend that the foreign article concerned be forbidden entry except under license from the Secretary of the Treasury and that the quantity permitted entry, or entry without an increase in duty, shall be allocated among the different supplying countries on the basis of the proportion of imports from each country in a previous representative period. Any proclamation under this section may be modified or terminated by the President whenever he approves findings submitted to him by the Commission that conditions require the modification recommended by the Commission to carry out the purposes of this section or that the conditions requiring the proclamation no longer exist.

Page 20, line 21, after the word "locality", insert the following: "or which adversely affects prevailing minimum wage or maximum workweek standards".

Page 21, line 19, strike out the period and insert a colon and the following:

Provided, That at least ninety days' notice from the date of the order must be given before any change is made effective if it increases wages or reduces hours.

Page 21, line 23, strike out beginning with the word "Such" down through and including the word "prescribe", on page 21, line 24, and insert in lieu thereof the following:

Such hearings shall be held at a point as near the principal place of business of the employer involved as is practicable and at such time as the Board may prescribe and reasonable notice must be given to those involved by registered mail or by personal service.

Page 22, line 4, strike out beginning with the word "Notice" down through and including the period, on page 22, line 7.

Page 28, line 4, strike out beginning with the letter "(b)" down through and including the period, on page 28, line 13.

Page 28, line 14, strike out the letter "(c)" and insert the letter "(b)".

Page 29, line 1, insert the following: "AND OF THE CHILDREN'S BUREAU".

Page 29, between the lines 7 and 8, insert a new paragraph to be designated as "(b)" and to read as follows:

(b) The Board shall utilize the Chief of the Children's Bureau in the Department of Labor, or any of his authorized representatives, for all investigations and inspections under section 12 with respect to the employment of minors and to bring all actions under section 13 to enjoin any act or practice which is unlawful by reason of the existence of oppressive child labor.

Page 29, line 8, strike out the letter "(b)" and insert the letter "(c)".

Page 30, line 18, after the word "Any" and before the word "contract" insert the words "provision of any".

Page 33, line 22, strike out the colon and insert a period.

Page 33, line 22, strike out beginning with the word "Provided" down through and including the word "thereunder" on page 34, line 10.

Page 39, between the lines 11 and 12, insert a new paragraph to be designated "(e)" and to read as follows:

(e) No producer, manufacturer, or dealer shall ship or deliver for shipment in interstate commerce any goods produced in any establishment situated in the United States in or about which within thirty days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

Page 39, line 12, strike out beginning with the word "Sec." down through and including the word "otherwise" on page 47, line 12.

Page 47, line 14, strike out the numerals "25" and insert the numerals "24".

Page 48, line 10, strike out the numerals "26" and insert the numerals "25".

GENERAL STATEMENT

On May 24, 1937, the President sent the following message to the Congress:

To the Congress of the United States:

The time has arrived for us to take further action to extend the frontiers of social progress. Such further action initiated by the legislative branch of the Government, administered by the Executive, and sustained by the judicial, is within the common-sense framework and purpose of our Constitution and receives beyond doubt the approval of our electorate.

The overwhelming majority of our population earns its daily bread either in agriculture or in industry. One-third of our population, the overwhelming majority of which is in agriculture or industry, is ill-nourished, ill-clad, and ill-housed.

The overwhelming majority of this Nation has little patience with that small minority which vociferates today that prosperity has returned, that wages are good, that crop prices are high, and that Government should take a holiday.

The truth of the matter, of course, is that the exponents of the theory of private initiative as the cure for deep-seated national ills want in most cases to improve the lot of mankind. But, well-intentioned as they may be, they fail for four

evident reasons: First, they see the problem from the point of view of their own business; second, they see the problem from the point of view of their own locality or region; third, they cannot act unanimously because they have no machinery for agreeing among themselves; and, finally, they have no power to bind the inevitable minority of chiselers within their own ranks.

Though we may go far in admitting the innate decency of this small minority, the whole story of our Nation proves that social progress has too often been fought by them. In actual practice it has been effectively advanced only by the passage of laws by State legislatures or the National Congress.

Today, you and I are pledged to take further steps to reduce the lag in the purchasing power of industrial workers and to strengthen and stabilize the markets for the farmers' products. The two go hand in hand. Each depends for its effectiveness upon the other. Both working simultaneously will open new outlets for productive capital. Our Nation so richly endowed with natural resources and with a capable and industrious population should be able to devise ways and means of insuring to all our able-bodied working men and women a fair day's pay for a fair day's work. A self-supporting and self-respecting democracy can plead no justification for the existence of child labor, no economic reason for chiseling workers' wages or stretching workers' hours.

Enlightened business is learning that competition ought not to cause bad social consequences which inevitably react upon the profits of business itself. All but the hopelessly reactionary will agree that to conserve our primary resources of manpower, government must have some control over maximum hours, minimum wages, the evil of child labor, and the exploitation of unorganized labor.

Nearly 20 years ago in his dissenting opinion in *Hammer v. Dagenhart*, Mr. Justice Holmes expressed his views as to the power of the Congress to prohibit the shipment in interstate or foreign commerce of the product of the labor of children in factories below what Congress then deemed to be civilized social standards. Surely the experience of the last 20 years has only served to reinforce the wisdom and the rightness of his views. And, surely if he was right about the power of the Congress over the work of children in factories, it is equally right that the Congress has the power over decent wages and hours in those same factories. He said:

"I had thought that the propriety of the exercise of a power admitted to exist in some cases was for the consideration of Congress alone and that this Court always had disavowed the right to intrude its judgment upon questions of policy or morals. It is not for this Court to pronounce when prohibition is necessary to regulation if it ever may be necessary—to say that it is permissible as against strong drink but not as against the product of ruined lives.

"The act does not meddle with anything belonging to the States. They may regulate their internal affairs and their domestic commerce as they like. But when they seek to send their products across the State line they are no longer within their rights. If there were no Constitution and no Congress their power to cross the line would depend upon their neighbors. Under the Constitution such commerce belongs not to the States but to Congress to regulate. It may carry out its views of public policy whatever indirect effect they may have upon the activities of the States. Instead of being encountered by a prohibitive tariff at her boundaries the State encounters the public policy of the United States which it is for Congress to express. The public policy of the United States is shaped with a view to the benefit of the Nation as a whole * * *. The national welfare as understood by Congress may require a different attitude within its sphere from that of some self-seeking State. It seems to me entirely constitutional for Congress to enforce its understanding by all the means at its command."

Mr. Justice Brandeis, Mr. Justice Clark, and Mr. Justice McKenna agreed. A majority of the Supreme Court, however, decided 5 to 4 against Mr. Justice Holmes and laid down a rule of constitutional law which has ever since driven into impractical distinctions and subterfuges all attempts to assert the fundamental power of the National Government over interstate commerce.

But although Mr. Justice Holmes spoke for a minority of the Supreme Court he spoke for a majority of the American people.

One of the primary purposes of the formation of our Federal Union was to do away with the trade barriers between the States. To the Congress and not to the States was given the power to regulate commerce among the several States. Congress cannot interfere in local affairs but when goods pass through the channels of commerce from one State to another they become subject to the power of the Congress, and the Congress may exercise that power to recognize and protect the fundamental interests of free labor.

And so to protect the fundamental interests of free labor and a free people we propose that only goods which have been produced under conditions which meet the minimum standards of free labor shall be admitted to interstate commerce. Goods produced under conditions which do not meet rudimentary standards of decency should be regarded as contraband and ought not to be allowed to pollute the channels of interstate trade.

These rudimentary standards will of necessity at the start fall far short of the ideal. Even in the treatment of national problems there are geographical and industrial diversities which practical statesmanship cannot wholly ignore. Backward labor conditions and relatively progressive labor conditions cannot be completely assimilated and made uniform at one fell swoop without creating economic dislocations.

Practical exigencies suggest the wisdom of distinguishing labor conditions which are clearly oppressive from those which are not as fair or as reasonable as they should be under circumstances prevailing in particular industries. Most fair labor standards as a practical matter require some differentiation between different industries and localities. But there are a few rudimentary standards of which we may properly ask general and widespread observance. Failure to observe them must be regarded as socially and economically oppressive and unwarranted under almost any circumstance.

Allowing for a few exceptional trades and permitting longer hours on the payment of time and a half for overtime, it should not be difficult to define a general maximum working week. Allowing for appropriate qualifications and general classifications by administrative action, it should also be possible to put some floor below which the wage ought not to fall. There should be no difficulty in ruling out the products of the labor of children from any fair market. And there should also be little dispute when it comes to ruling out of the interstate markets products of employers who deny to their workers the right of self-organization and collective bargaining, whether through the fear of labor spies, the bait of company unions, or the use of strikebreakers. The abuses disclosed by the investigations of the Senate must be promptly curbed.

With the establishment of these rudimentary standards as a base we must seek to build up, through appropriate administrative machinery, minimum wage standards of fairness and reasonableness, industry by industry, having due regard to local and geographical diversities and to the effect of unfair labor conditions upon competition in interstate trade and upon the maintenance of industrial peace.

Although a goodly portion of the goods of American industry move in interstate commerce and will be covered by the legislation which we recommend, there are many purely local pursuits and services which no Federal legislation can effectively cover. No State is justified in sitting idly by and expecting the Federal Government to meet State responsibility for those labor conditions with which the State may effectively deal without fear of unneighborly competition from sister States. The proposed Federal legislation should be a stimulus and not a hindrance to State action.

As we move resolutely to extend the frontiers of social progress, we must be guided by practical reason and not by barren formulas. We must ever bear in mind that our objective is to improve and not to impair the standard of living of those who are now undernourished, poorly clad, and ill-housed.

We know that overwork and underpay do not increase the national income when a large portion of our workers remain unemployed. Reasonable and flexible use of the long-established right of government to set and to change working hours can, I hope, decrease unemployment in those groups in which unemployment today principally exists.

Our problem is to work out in practice those labor standards which will permit the maximum but prudent employment of our human resources to bring within the reach of the average man and woman a maximum of goods and of services conducive to the fulfillment of the promise of American life.

Legislation can, I hope, be passed at this session of the Congress further to help those who toil in factory and on farm. We have promised it. We cannot stand still.

FRANKLIN D. ROOSEVELT.

THE WHITE HOUSE,
May 24, 1937.

On May 24, 1937, immediately following the reading of the President's message, Senator Black and the late Representative Connery simultaneously introduced bills in the Senate and the House to carry out the objectives outlined by the President. Joint public hearings were held by the Senate and the House committees to which the bills were respectively referred. These hearings extended over a period of 2 weeks, and every person desiring to be heard was given an opportunity to present his views. On July 6, the bill introduced by Senator Black (S. 2475) was reported to the Senate with an amendment, and on August 2 was passed by the Senate with further amendments. The House Committee on Labor had been considering H. R. 7200, the companion House bill introduced by the late Representative Connery, with a view to amending it in order to strengthen and clarify it. When the Senate bill was passed by the Senate and referred to the House committee, the committee, in order to expedite legislative consideration of wages-and-hours legislation, immediately took up the Senate bill, incorporated therein various amendments it had already adopted to the House bill, and added such others as were considered necessary. The bill is herewith reported to the House by an overwhelming vote of the committee.

From the message of the President, above quoted, it is plain that this administration is privileged to give relief to that large majority who constitute one-third of our population, referred to by the President as "ill-nourished, ill-clad, and ill-housed." The great mass of our population has little patience with that small minority which has been termed "chiselers." It is at this minority particularly that the bill, a modest and conservative approach to the great objectives outlined by the President in his message, is aimed. It is an attempt to begin to meet and not to avoid some of the most vital problems of American economic life. In doing this, a few may suffer some inconvenience, and possibly financial loss, for a short time, but the fact that a tremendous number of injustices will be cured by the bill fully justifies the inconvenience and even the loss. There never has been, and possibly never will be, a law passed the adjustment to which has not caused some inconvenience. The committee recognizes this and it has worked many weeks considering this bill in its endeavor to be fair and just to all. Surely every Member of the House believes in the the principles of the bill. To write a bill embodying those principles and, at the same time, cause no inconvenience to anyone was, of course, impossible. The committee realized that undesirable labor conditions of long standing, which we know exist in our country, cannot be blotted out overnight, and that geographical and industrial differences in a nation as heterogeneous as ours cannot be ignored.

America does not suffer from a scarcity of goods or a scarcity of labor, but from a scarcity of purchasing power. American agriculture can produce all the food we can buy. American industry can produce all the industrial products which our markets today are able to absorb. The American farm and the American factory could supply much more adequately and abundantly the needs of our people if our people had the wherewithal to buy what the farm and factory can produce. A full third of the American people have not the purchasing power to maintain what we should like to regard as a decent standard of American life. Too many of our workers are working excessively long hours for excessively low pay, too many men and women able and willing to work, are unable to do so, seek as they may to find a job.

A fair day's pay for a fair day's work will increase the purchasing power of American workers. It will enable them in turn to buy more products from farm and factory. It will give increased employment in industry and on the farm to those now unemployed. While the committee realizes that there is no one panacea to solve this basic problem of purchasing power, and that it must be approached from many angles and in many ways, the committee believes that the Black-Connery bill presents a very significant approach to the problem. It does not, however, purport to solve the problem overnight. It only attempts in a modest way to raise the wages of the most poorly paid workers and to reduce the hours of those most overworked. The bill is intended to aid and not supplant the efforts of American workers to improve their own position by self-organization and collective bargaining. Collective bargaining efforts will be greatly strengthened by the power given to the Board to prevent competing, chiselling employers from undercutting decent, minimum, wage standards or from stretching decent maximum-hour standards.

A maximum wage of 40 cents will yield an annual income of \$800 a year to those continuously employed for 50 weeks. No fair-minded person would suggest that this amount is too much to maintain the minimum American standard of living. The low-wage group we hope to reach through the bill is not concentrated in any one section of the country, the problem is national in its scope and its effect. Although the committee believes it is necessary to reach the 40-cent minimum as soon as possible, at the same time it recognizes that a flat 40-cent minimum cannot immediately be established in all occupations and in all sections of the country without producing some economic dislocations. Therefore, the Board established under the bill, is directed to establish minimum wages at or as near 40 cents per hour as is economically feasible without curtailing opportunities for employment or dislocating industry. It is obviously not practical for the Congress directly to hear evidence and pass judgment upon the industrial and other facts determining conditions in numerous occupations and regions. Such judgment can be satisfactorily formulated only by an expert administrative tribunal after investigation and hearing.

The bill has been drafted in accordance with the principles of constitutional law, particularly those enunciated in the recent minimum wage and Labor Relations Board decisions of the Supreme Court of the United States.

1. It applies only to industries engaged in the production of goods for interstate commerce and directly affecting interstate commerce. It does not affect the purely local intrastate business.

2. Legislative definitions and terms used in the act and the standards set out to guide the Board in the administration of the act clearly announce the congressional intent with respect to the legislation and preclude arbitrary action by the Board.

3. Specific protection for, and regulation of the conditions and hours of work of, women and children are required.

4. The administration of the act is placed in a board of five men appointed in accordance with the requirements of geographical, industrial, and labor differences and the Board must be confirmed by the Senate.

5. The administrative Board created under the bill is required to appoint State directors for each State, Territory, and the District of

Columbia thereby localizing and decentralizing to some extent the administration of the law.

6. The personnel of the Board is required to be selected from the civil-service lists.

7. The Board is required to submit an annual report of its activities to Congress.

8. The bill sets forth very definite standards and policies which the Board must follow in raising wages or decreasing hours. Collective bargaining, local economic conditions, production, and transportation costs must be taken into consideration by the Board before a minimum-wage or maximum-hours order is made.

9. The bill bars from interstate commerce goods produced under substandard labor conditions but does not attempt to legislate fair trade practices as did the N. R. A.

10. Hearings before the Board are to be conducted locally. There will be no need of businessmen and labor groups traveling to Washington to protect their rights.

11. The Board is permitted to determine minimum wages and maximum hours only in those industries where substandard labor conditions exist. The high type American businessman whose wages and hours are in line with the thought of the President on this social principle need not fear that the Government is trying to interfere with his business.

12. The power of the Tariff Commission under the Tariff Act of 1930 to protect American labor against foreign competition is specifically invoked under this act.

13. Labor standard orders fixing minimum wages and maximum hours can be made under the bill only after notice and hearings to the interested parties. Modification and revocation of orders are likewise subject to notice and hearings.

15. The orders of the Board can be made only after the receipt of advice from a committee representing labor, industry, and the public.

16. The bill provides in specific detail the manner of conducting investigations and of taking testimony, all with due regard for the constitutional rights of persons appearing before the Board.

17. The bill specifically grants the employee a right of action for the amount of wages payable representing the difference between the minimum wage and the substandard wage actually paid.

18. The bill, if enacted, will not supersede any State minimum-wage law if the State minimum-wage law is higher. No State maximum-hour law will be superseded if the State maximum hour is lower.

19. The orders of the Board are subject to review by the Circuit Court of Appeals of the United States.

20. And last but not least, the bill does away with the evil of child labor in the factory. At long last, goods produced at the cost of the ruined lives of American children are definitely banned from the channels of interstate commerce.

SUMMARY OF PROVISIONS

Immediately after the enacting clause an amendment proposed by the committee provides that the act be known as the Black-Connerly Fair Labor Standards Act of 1937. The committee is unanimous in proposing this amendment desiring to perpetuate the name of the

late Representative William Connery, coauthor of the bill and a man whose very life was lived for the principles embodied in this bill.

The bill is divided into four parts. Part I contains the legislative declaration and definition of terms used in the bill, and establishes the Labor Standards Board.

LEGISLATIVE DECLARATION

Section 1, the legislative declaration, recites the adverse effects upon interstate commerce of the employment of workers under substandard labor conditions in occupations in and affecting interstate commerce. It contains also a declaration that the correction of such conditions affecting interstate commerce requires congressional action prohibiting the shipment in interstate commerce of goods produced under such substandard conditions, and providing for the elimination of substandard labor conditions in occupations in and directly affecting interstate commerce.

DEFINITIONS

Section 2 (a) contains a series of definitions used in the bill. The more important definitions and the definitions to which the committee proposes amendments are as follows:

"Employer" is defined to include any person acting directly or indirectly in the interest of an employer in relation to an employee but does not include the United States or any State or any political subdivision thereof or any labor organization except when that organization acts as an employer.

"Employee" is defined to include any individual employed or suffered or permitted to work by an employer, but does not include any person employed in a bona-fide executive, administrative, professional, or local retailing capacity. A committee amendment proposes to insert after "capacity" the words "as outside salesmen." It excludes all persons employed as seamen, fishermen, any railroad employee subject to the Hours of Service Act, any employee of a common carrier by motor vehicle subject to the Motor Carrier Act, and a committee amendment provides that the wage provisions of the act shall apply to the employees of such common carriers by motor vehicle. Air-transport employees subject to title II of the Railway Labor Act are also excluded from the definition of "employee" as are all persons employed in agriculture. "Agriculture" is defined to include, among other things, practices ordinarily performed by farmers or on a farm as an incident to farm operations. A committee amendment proposes to strike out the word "ordinarily" before "performed." A committee amendment proposes to make it clear that independent contractors and their employees engaged in transporting farm products from farm to market are not persons employed in agriculture. A committee amendment proposes to strike out the provisions exempting employees of certain express companies from the definition of "employee."

"Oppressive wage" is defined to mean any wage lower than that set by order of the Board under the provisions of section 4 of the bill.

"Oppressive workweek" is defined to mean a workweek or workday longer than that set by order of the Board under the provisions of section 4 of the bill.

"Oppressive child labor" is defined to mean the employment of employees (as defined in the act to exclude employees in agriculture)

under the age of 16 years or the employment of such employees between the ages of 16 and 18 years in an occupation which the Children's Bureau has determined to be particularly dangerous or detrimental to the health or well-being of such children. The Children's Bureau is authorized to exclude from the definition of oppressive child labor the employment of employees under the age of 16 only if such employment will not interfere with their schooling or be detrimental to their health. This definition is an amendment proposed by the committee.

"Substandard labor condition" is defined to mean employment under which any employee is employed at an oppressive wage, or any employee is employed for an oppressive workweek, or, by virtue of a committee amendment necessary to make the bill conform to the other child labor provisions of the bill, oppressive child labor exists. A committee amendment further provides that a substandard labor condition exists where women or minors are employed between the hours of midnight and 6 a. m.

"Fair labor standard" is defined to mean employment under which no person is employed at an oppressive wage, or no person is employed for an oppressive workweek, or, by virtue of a committee amendment to make this provision conform to the other child labor provisions of the bill, no oppressive child labor exists.

"Unfair goods" is defined to mean any goods produced under "substandard labor conditions" as defined in the bill. A committee amendment proposes to include in the definition of "unfair goods" those produced in whole or in part by convicts or prisoners except convicts or prisoners on parole or probation.

"Produced" means produced, manufactured, mined, handled, or in any other manner worked on, in any State. This definition further provides that any employee shall be deemed to have been engaged in the production of goods if he was employed in producing, manufacturing, mining, handling, transporting or in any other manner working on such goods or in any process or occupation necessary to the production thereof, in any State. A committee amendment proposes to strike out the words "in any State" wherever they appear in the definition.

The term "person employed in agriculture" as used in the bill insofar as it refers to fresh fruits or vegetables, includes persons employed within the area of production engaged in preparing, packing, or toring such fresh fruits or vegetables in their raw or natural state.

EVIDENCE OF EMPLOYMENT UNDER SUBSTANDARD LABOR CONDITIONS

Section 2 (b) provides that proof that any employee was employed under any substandard labor condition, in any place of employment where goods are produced, within 90 days prior to the removal of goods therefrom, shall be prima-facie evidence that such goods were produced by such employee employed under such substandard labor condition.

WAGE AND HOUR REGULATIONS TO APPLY WITHOUT REGARD TO SEX

Section 2 (c) is a committee amendment providing that all wage and hour regulations under the provisions of the bill shall apply to workers without regard to sex.

LABOR STANDARDS BOARD

Section 3 provides for the creation of a Labor Standards Board composed of five members appointed for staggered terms of 5 years each, except that the members first appointed are appointed for terms of 1, 2, 3, 4, and 5 years respectively. In the appointment of the Board a committee amendment proposes that the President appoint one member from the Northeast, one from the Northwest, one from the Southeast, one from the Southwest, and one from the central part of the United States and one of such members is to be a representative of employers and one is to be a representative of employees. The members of the Board must be appointed with the advice and consent of the Senate. The section contains the usual provisions regarding the filling of vacancies, the salary of the Board members, the maintenance of offices and the filing of reports. Committee amendments to this section provide (1) that the Board shall appoint a director for each State, Territory, and the District of Columbia to serve the Board as it shall direct, (2) that all employees of the Board shall be under civil service, (3) that the Board shall be represented in all litigation by the Attorney General or such attorney or attorneys as he shall designate, (4) for striking out the provisions requiring that all appointments, the annual salary of which is \$4,000 a year or more, shall be confirmed by the Senate, and (5) that the Board shall submit a report to Congress in January of each year.

ESTABLISHMENT OF FAIR LABOR STANDARDS

Part II of the bill provides for the establishment of labor standards with respect to minimum wages and maximum hours, the application of such standards to particular employments and classes of employments, and appropriate exemptions from such standards. This part deals only with the fixing of the standards and the consequences of noncompliance. The powers of the Board to require compliance are defined in parts III and IV.

Section 4 (a) declares, for reasons specified in such section, that it is the policy of the act to maintain, so far as and as rapidly as is economically feasible, minimum wage and maximum hour standards consistent with health, efficiency and general well-being of workers and the maximum productivity and profitable operation of American business.

ESTABLISHMENT OF MINIMUM WAGE STANDARDS

Section 4 (b) directs the Board by order to declare from time to time for such occupations as are brought within the operation of the bill, minimum wages which shall be as nearly adequate as is economically feasible without curtailing opportunity for employment, to maintain a minimum standard of living necessary for health, efficiency, and general well-being. The Board's jurisdiction, however, does not include the power to declare minimum wages in excess of 40 cents per hour, but it is the objective of the bill to attain a minimum wage of 40 cents per hour as rapidly as practicable without curtailing opportunities for employment and without disturbance and dislocation of business and industry, and the attainment of higher minimum wages by collective bargaining and otherwise is to be encouraged. In de-

claring such minimum wages the Board is directed to consider among other relevant circumstances the cost of living, such considerations as would be relevant in a court in a suit for the value of services rendered, wages established for work of like or comparable character by collective labor agreements, and wages paid for like work by employers voluntarily maintaining minimum wage standards. Committee amendments propose to add as relevant circumstances to be taken into consideration (1) the relative cost of transporting goods from points of production to consuming markets and (2) the differences in unit costs of manufacturing occasioned by varying local natural resources, operating conditions, or other factors entering into the cost of production.

ESTABLISHMENT OF MAXIMUM HOUR STANDARDS

Section 4 (c) authorizes the Board by order from time to time to declare for such occupations as are brought within the provisions of the bill, a maximum workweek (and the maximum workday therein) which shall be as nearly adequate as is economically feasible without curtailing earning power, to maintain health, efficiency, and general well-being. Various persons are exempted from the provisions of this subsection. A committee amendment proposes as an additional exemption persons employed in connection with the ginning, compressing, and storing of cotton or with the processing of cottonseed. These exemptions apply only where the services of the persons are of a seasonal nature. A further committee amendment to this subsection provides that it shall be the declared policy of the act to discourage the employment of persons between the hours of midnight and 6 a. m. in those industries and occupations which do not require continuous-process operations and persons employed in such industries or occupations between midnight and 6 a. m. shall be paid at the rate of not less than one and one-half times the rate established pursuant to the minimum-wage provisions of the bill.

The Board's jurisdiction, however, does not include the power to declare a maximum workweek of less than 40 hours; but it is the objective of the act to attain a maximum workweek of not more than 40 hours as rapidly as practicable without curtailing earning power or reducing production, and the attainment of a shorter workweek by collective bargaining or otherwise is to be encouraged. In declaring maximum hours the Board is directed to consider among other relevant circumstances (1) the relation of the work to the physical and economic health, efficiency, and well-being of the employees; (2) the number of persons available for employment in the occupation; (3) the hours of employment established for work of like or comparable character by collective bargaining agreements; (4) the hours of employment for work of like or comparable character maintained by employers who voluntarily maintain a maximum workweek; (5) the provisions of this subsection shall not apply to employees engaged in processing or packing perishable agricultural products during the harvesting season; and (6) the average minimum wage ordered by the Board to be paid private employers in any State shall be the minimum wage paid by the Works Progress Administration to its employees in that State.

COLLECTIVE BARGAINING AGREEMENTS PROTECTED

Section 5 provides that nothing in the act or in any regulation or order of the Board shall be construed to interfere with the right of employees to bargain collectively or otherwise engage in concerted activities to obtain a wage in excess of the applicable minimum under the act or to obtain a shorter workweek than the maximum workweek under the act or other benefits or advantages. Minimum wages and maximum workweeks so sought or obtained are not to be construed or deemed to be illegal because they are in excess of the applicable minimum wage or maximum workweek, as the case may be, under the act. The committee proposes an amendment that provides (1) a labor standard order shall be made only if the Board finds that collective bargaining agreements in respect to minimum wages or maximum hours do not cover a substantial portion of the employees or that existing facilities for collective bargaining are inadequate or ineffective to accomplish the purposes of the act; (2) a labor standard order covering any occupation shall not establish for any locality in which such occupation is carried on a minimum wage which is lower or a maximum workweek which is longer than the minimum wage or maximum workweek prevailing for like work done under substantially like conditions in such occupation in such locality, unless the minimum wage established by such order is the highest wage or the maximum workweek is the shortest workweek that the Board is authorized to establish under the act; (3) that the minimum wages and maximum workweeks established by collective bargaining agreements in any occupation shall be prima-facie evidence of the appropriate minimum wage and maximum workweek to be established by the Board for like work done under substantially like conditions.

EXEMPTIONS FROM WAGE-AND-HOUR STANDARDS

Section 6 provides certain exemptions from the wage and hour standards established under the bill. Subsection (a) introduces flexibility in the regulation of hours by authorizing employment for more hours per week than the applicable maximum upon condition that payment for such overtime is made at one and one-half times the regular rate. The Board is authorized to remove or qualify this exemption if it finds that the maintenance of the appropriate workweek is necessary or appropriate in order to prevent the circumvention of the act. Subsection (b) authorizes the Board to make appropriate exceptions from the wage and hour standards for special cases such as learners and apprentices, and disabled persons, to whom special licenses are to be issued, deductions for board and lodging necessitated by the nature of the work, overtime employment in seasonal or emergency work, and other similar situations. A committee amendment to this subsection proposes to change the word "license" wherever it appears to "certificates" and to limit the exceptions with respect to apprentices to those who have special certificates issued pursuant to regulations of the Department of Labor.

PROHIBITIONS RELATING TO INTERSTATE COMMERCE; TARIFF PROVISIONS

Part III of the bill contains the provisions (1) barring from interstate commerce goods which were produced under substandard labor conditions set forth in the bill, (2) prohibiting the employment under substandard labor conditions of any employee engaged in interstate commerce or in the production of goods intended for transportation in violation of the provisions of the bill, and (3) protecting interstate commerce from the effect of substandard labor conditions. This part also contains provisions relating to imports.

PROHIBITED SHIPMENTS AND EMPLOYMENT CONDITIONS IN INTERSTATE COMMERCE AND PRODUCTION FOR INTERSTATE COMMERCE

Section 7 makes it unlawful among other things to sell or ship in interstate commerce any unfair goods, i. e., goods on which any employee has been employed under any substandard labor condition. It also makes it unlawful to employ, under any substandard labor condition, a person engaged in interstate commerce or in the production of unfair goods intended to be sold or shipped in interstate commerce.

PROTECTION OF INTERSTATE COMMERCE FROM EFFECT OF SUBSTANDARD LABOR CONDITIONS

Section 8 (a) authorizes the Board to make orders requiring elimination of substandard labor conditions existing in the production of goods which are not sold in interstate commerce but which compete to a substantial extent with fair goods brought in from another State.

Section 8 (b) makes it unlawful to violate an order issued under section 8 (a).

TARIFF PROVISIONS

Sections 8 (c) and (d) are new tariff provisions proposed as a committee amendment. These provisions authorize the President, after investigation by the Tariff Commission and upon the recommendation of the Commission, to make such increases in the duty, or to impose such limitations on the quantity permitted entry (or entry without duty increase), as may be necessary in order to equalize differences in the costs of production of any domestic article and of any like or similar foreign article resulting from the operation of the Labor Standards Act and in order to maintain the standards established pursuant to the act. In case of any article on the free list of the Tariff Act of 1930, possible action is limited to import quotas.

The provisions are so drawn that remedial action is possible with respect to any item, whether or not it is included in any trade agreement, present or future. With respect to a trade agreement item, however, possible action is limited to import quotas, since any increase in the duty on such an item would be in violation of the trade agreement. Section 8 (d) contains the specific provision that "Nothing in this section shall be construed as permitting action in violation of any international obligation of the United States." Section 8 (d) further provides in the case of quotas that the quantities permitted entry, or

entry without an increase in duty, shall be allocated to the supplying countries on the basis of the proportion of imports from each such country in a previous representative period. This provision is designed to assure against the discriminatory allocation of such quotas contrary to the letter and spirit of our existing international obligations and policies.

GENERAL ADMINISTRATIVE PROVISIONS

Part IV, the last part of the bill, contains the general administrative procedural, and enforcement provisions.

LABOR STANDARD ORDER

Section 9 contains provisions applicable to orders of the Board made under sections 4, 6, and 8. It provides among other things that such orders may be made only after a hearing, shall define the occupations to which they relate, may classify employers, employees, and employment according to localities, population, and other circumstances and make appropriate provisions for different classes. The section provides that it shall be the policy of the Board to avoid any classification which effects an unreasonable discrimination against any person or locality. A committee amendment proposes to direct the Board to avoid any classification which adversely affects prevailing minimum wage or maximum workweek standards. The Board is directed to avoid unnecessary and excessive classifications. Provision is made for the inclusion in orders relating to wages of such terms and conditions as the Board may consider appropriate to prevent the minimum wage from becoming the maximum wage. And the policy is declared that orders relating to wages shall affect only those employees who need legislative protection and shall not interfere with the voluntary establishment of appropriate differentials and higher standards for other employees in the occupation. A committee amendment proposes that at least 90 days' notice from the date of the order must be given before any change is made effective if it increases wages or reduces hours.

HEARINGS

Section 10 contains provisions regarding the hearings which are to be held by the Board before orders are made, modified, extended, or rescinded. A committee amendment proposes that these hearings shall be held at a point as near the principal place of business of the employer involved as is practicable and at such time as the Board may direct and that reasonable notice must be given to those involved by registered mail or by personal service. This section further states the conditions under which the Board shall order a hearing.

ADVISORY COMMITTEES ON WAGE AND HOUR STANDARD

Section 11 requires the Board to appoint advisory committees composed of representatives of employers, employees, and the public before making an order under section 4 establishing a minimum wage or a maximum workweek, and contains provisions regarding the composition and procedure of such committees.

INVESTIGATIONS AND TESTIMONY

Section 12 contains the usual administrative provisions authorizing the Board to conduct investigations, subpoena witnesses, and compel testimony.

INJUNCTIONS TO ENFORCE COMPLIANCE WITH ACT

Section 13 provides for the enforcement of the act and the orders thereunder by authorizing the Board to institute suit in the United States district courts to enjoin violations.

RECORDS AND LABELS

Section 14 requires employers to keep such records as the Board may prescribe as necessary or appropriate for the enforcement of the Act. It further provides for the posting of orders in each place where employees in any occupation subject thereto are employed. A committee amendment proposes to strike out subsection (b) of this section which provides that the Board may direct that goods subject to the act be labeled.

PROSECUTIONS OF PERSONS OTHER THAN PRODUCERS

Section 14 (c) provides that no person other than the producer shall be prosecuted for the transportation, shipment, delivery or sale of unfair goods who has secured a representation in writing from the person by whom the goods, transported, shipped, or delivered were produced, resident in the United States, to the effect that such goods were not produced in violation of any provisions of this act.

POWERS OF THE SECRETARY OF LABOR AND OF THE CHILDREN'S BUREAU

Section 15 provides that the Board shall, so far as practicable, make its investigations and inspections through the Secretary of Labor and his representatives, and authorizes the Secretary of Labor to make such investigations and inspections. A committee amendment proposes further that the Board shall utilize the Chief of the Children's Bureau or any of his authorized representatives for all investigations and inspections under section 12 with respect to the employment of minors and to bring all actions under section 13 to enjoin any act which is unlawful because of the existence of child labor. This section further provides that the Secretary of Labor may utilize the services of State and local agencies officers and employees, and reimburse them for such services.

REGULATIONS AND ORDERS

Section 16 confers upon the Board power to make, issue, amend, and rescind such regulations and orders as it deems necessary or appropriate to carry out the provisions of the act.

VALIDITY OF CONTRACTS

Section 17 (a) declares void any contract made in violation of any provision of the act. A committee amendment proposes to insert "provision of any" before "contract".

Section 17 (b) makes void any contract binding on any person to waive compliance with any provision of the act.

REPARATION

Section 18 provides for the payment of reparation to employees who have been paid a lower wage or employed for longer hours than the applicable standards allow. In the case of wages this reparation amounts to the difference between the wages received, and that which should have been paid. In the case of hours, additional compensation is required for the overtime (where the act requires overtime) at the rate of one and one-half times the regular wage. The right to this reparation is granted when the condition of employment in question is required to be maintained under the act as well as when goods are shipped in violation of the act, but in the latter case the employer is entitled to prove that he had no reasonable ground to believe that the goods would be transported in violation of the act. And the Board may exempt goods from the prohibition against interstate shipment if it is established to the satisfaction of the Board that every person having a substantial proprietary interest in the goods had no reason to believe that any substandard condition existed in the production of the goods, or that the exemption is necessary to prevent undue hardship or waste and is not detrimental to the public interest; but in order to secure such exemption, provision must be made for the payment of reparation by every employer having a proprietary interest in the goods who failed to maintain the required wage or hour standard.

RELATION TO OTHER LAWS

Section 19 provides that the bill shall not justify noncompliance with any other Federal, State, or municipal regulation imposing higher standards. A committee amendment proposes to strike out the provisions of this section with regard to the application of the Walsh-Healey Act to this bill.

COMMON CARRIERS NOT LIABLE

Section 20 provides that common carriers shall not be liable under the act for the shipment of goods in the regular course of their business, and shall not be excused by the bill from their obligations to accept goods for transportation.

COURT REVIEW OF ORDERS

Section 21 provides for review in the circuit court of appeals of orders of the Board.

JURISDICTION OF OFFENSES AND SUITS

Section 22 confers appropriate jurisdiction on the district courts over civil and criminal proceedings under the act.

PENALTIES

Section 23 provides appropriate penalties for violation of provisions of the act. A committee amendment proposes to add a new subsection to this section providing that no producer, manufacturer, or dealer

shall ship in interstate commerce any goods produced in an establishment in which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed.

A committee amendment proposes to strike out all of section 24, this section containing the child-labor provisions which were adopted as an amendment to the bill on the floor of the Senate.

SEPARABILITY OF PROVISIONS

Section 25 is a separability clause.

EFFECTIVE DATE OF ACT

Section 26 provides that the act shall take effect immediately but that no provision requiring the maintenance of any fair labor standard or giving effect to any substandard labor condition shall take effect until the one hundred and twentieth day after the enactment of the act and that no labor standard order shall be effective prior to that day.

CHANGES IN EXISTING LAW

The proviso in section 19, contained in the bill as it passed the Senate and proposed to be stricken out by a committee amendment (p. 40 of the reported bill), although not an express amendment of the Walsh-Healey Act (49 Stat. 2036), modifies its operation and application. The text of the act is as follows:

[PUBLIC—No. 846—74TH CONGRESS]

[S. 3055]

AN ACT To provide conditions for the purchase of supplies and the making of contracts by the United States, and for other purposes

Be it enacted by the Senate and the House of Representatives of the United States of America in Congress assembled, That in any contract made and entered into by any executive department, independent establishment, or other agency or instrumentality of the United States, or by the District of Columbia, or by any corporation all the stock of which is beneficially owned by the United States (all the foregoing being hereinafter designated as agencies of the United States), for the manufacture or furnishing of materials, supplies, articles, and equipment, in any amount exceeding \$10,000, there shall be included the following representations and stipulations:

NOTE.—Such of the provisions of section 19 of the bill (S. 2475) as relate to the application of this Act provide that when any person subject to the bill is awarded a Government contract for goods in excess of \$2,000, he shall also be subject to this act, notwithstanding the \$10,000 limitation above provided for. A committee amendment proposes to strike such provisions from the bill.

(a) That the contractor is the manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract;

(b) That all persons employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract will be paid, without subsequent deduction or rebate on any account, not less than the minimum wages as determined by the Secretary of Labor to be the prevailing minimum wages for persons employed on similar work or in the particular or similar industries or groups of industries currently operating in the locality in which the materials, supplies, articles, or equipment are to be manufactured or furnished under said contract;

(c) That no person employed by the contractor in the manufacture or furnishing of the materials, supplies, articles, or equipment used in the performance of the contract shall be permitted to work in excess of eight hours in any one day or in excess of forty hours in any one week;

(d) That no male person under sixteen years of age and no female person under eighteen years of age and no convict labor will be employed by the contractor in the manufacture or production or furnishing of any of the materials, supplies, articles, or equipment included in such contract; and

(e) That no part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated in any plants, factories, buildings, or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of said contract. Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection.

SEC. 2. That any breach or violation of any of the representations and stipulations in any contract for the purposes set forth in section 1 hereof shall render the party responsible therefor liable to the United States of America for liquidated damages, in addition to damages for any other breach of such contract, the sum of \$10 per day for each male person under sixteen years of age, or each female person under eighteen years of age, or each convict laborer knowingly employed in the performance of such contract, and a sum equal to the amount of any deductions, rebates, refunds, or underpayment of wages due to any employee engaged in the performance of such contract; and, in addition, the agency of the United States entering into such contract shall have the right to cancel same and to make open-market purchases or enter into other contracts for the completion of the original contract, charging any additional cost to the original contractor. Any sums of money due to the United States of America by reason of any violation of any of the representations and stipulations of said contract set forth in section 1 hereof may be withheld from any amounts due on any such contracts or may be recovered in suits brought in the name of the United States of America by the Attorney General thereof. All sums withheld or recovered as deductions, rebates, refunds, or underpayments of wages shall be held in a special deposit account and shall be paid, on order of the Secretary of Labor, directly to the employees who have been paid less than minimum rates of pay as set forth in such contracts and on whose account such sums were withheld or recovered: *Provided*, That no claims by employees for such payments shall be entertained unless made within one year from the date of actual notice to the contractor of the withholding or recovery of such sums by the United States of America.

SEC. 3. The Comptroller General is authorized and directed to distribute a list to all agencies of the United States containing the names of persons or firms found by the Secretary of Labor to have breached any of the agreements or representations required by this Act. Unless the Secretary of Labor otherwise recommends no contracts shall be awarded to such persons or firms or to any firm, corporation, partnership, or association in which such persons or firms have a controlling interest until three years have elapsed from the date the Secretary of Labor determines such breach to have occurred.

SEC. 4. The Secretary of Labor is hereby authorized and directed to administer the provisions of this Act and to utilize such Federal officers and employees and, with the consent of the State, such State and local officers and employees as he may find necessary to assist in the administration of this Act and to prescribe rules and regulations with respect thereto. The Secretary shall appoint, without regard to the provisions of the civil-service laws but subject to the Classification Act of 1923, an administrative officer, and such attorneys and experts, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as he may from time to time find necessary for the administration of this Act. The Secretary of Labor or his authorized representatives shall have power to make investigations and findings as herein provided, and prosecute any inquiry necessary to his functions in any part of the United States. The Secretary of Labor shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act.

SEC. 5. Upon his own motion or on application of any person affected by any ruling of any agency of the United States in relation to any proposal or contract involving any of the provisions of this Act, and on complaint of a breach or violation of any representation or stipulation as herein provided, the Secretary of Labor, or an impartial representative designated by him shall have the power to

hold hearings and to issue orders requiring the attendance and testimony of witnesses and the production of evidence under oath. Witnesses shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy, failure, or refusal of any person to obey such an order, any District Court of the United States or of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on, or within the jurisdiction of which said person who is guilty of contumacy, failure, or refusal is found, or resides or transacts business, upon the application by the Secretary of Labor or representative designated by him, shall have jurisdiction to issue to such person an order requiring such person to appear before him or representative designated by him, to produce evidence if, as, and when so ordered, and to give testimony relating to the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof; and shall make findings of fact after notice and hearing, which findings shall be conclusive upon all agencies of the United States, and if supported by the preponderance of the evidence, shall be conclusive in any court of the United States; and the Secretary of Labor or authorized representative shall have the power, and is hereby authorized, to make such decisions, based upon findings of fact, as are deemed to be necessary to enforce the provisions of this Act.

SEC. 6. Upon a written finding by the head of the contracting agency or department that the inclusion in the proposal or contract of the representations or stipulations set forth in section 1 will seriously impair the conduct of Government business, the Secretary of Labor shall make exceptions in specific cases or otherwise when justice or public interest will be served thereby. Upon the joint recommendation of the contracting agency and the contractor, the Secretary of Labor may modify the terms of an existing contract respecting minimum rates of pay and maximum hours of labor as he may find necessary and proper in the public interest or to prevent injustice and undue hardship. The Secretary of Labor may provide reasonable limitations and may make rules and regulations allowing reasonable variations, tolerances, and exemptions to and from any or all provisions of this Act respecting minimum rates of pay and maximum hours of labor or the extent of the application of this Act to contractors, as hereinbefore described. Whenever the Secretary of Labor shall permit an increase in the maximum hours of labor stipulated in the contract, he shall set a rate of pay for any overtime, which rate shall be not less than one and one-half times the basic hourly rate received by any employee affected.

SEC. 7. Whenever used in this Act, the word "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

SEC. 8. The provisions of this Act shall not be construed to modify or amend title III of the Act entitled "An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes", approved May 3, 1933 (commonly known as the Buy American Act), nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act relating to the rate of wages for laborers and mechanics employed on public buildings of the United States and the District of Columbia by contractors and subcontractors, and for other purposes", approved March 3, 1931 (commonly known as the Bacon-Davis Act), as amended from time to time, nor the labor provisions of title II of the National Industrial Recovery Act, approved June 16, 1933, as extended, or of section 7 of the Emergency Relief Appropriation Act, approved April 8, 1935; nor shall the provisions of this Act be construed to modify or amend the Act entitled "An Act to provide for the diversification of employment of Federal prisoners, for their training and schooling in trades and occupations, and for other purposes", approved May 27, 1930, as amended and supplemented by the Act approved June 23, 1934.

SEC. 9. This Act shall not apply to purchases of such materials, supplies, articles, or equipment as may usually be bought in the open market; nor shall this Act apply to perishables, including dairy, livestock, and nursery products, or to agricultural or farm products processed for first sale by the original producers; nor to any contracts made by the Secretary of Agriculture for the purchase of agricultural commodities or the products thereof. Nothing in this Act shall be construed to apply to carriage of freight or personnel by vessel, airplane, bus, truck, express, or railway line where published tariff rates are in effect or to common carriers subject to the Communications Act of 1934.

SEPARABILITY CLAUSE

SEC. 10. If any provision of this Act, or the application thereof to any persons or circumstances, is held invalid, the remainder of the Act, and the application of such provisions to other persons or circumstances, shall not be affected thereby.

SEC. 11. This Act shall apply to all contracts entered into pursuant to invitations for bids issued on or after ninety days from the effective date of this Act: *Provided, however,* That the provisions requiring the inclusion of representations with respect to minimum wages shall apply only to purchases or contracts relating to such industries as have been the subject matter of a determination by the Secretary of Labor.

Approved, June 30, 1936.

○

EMPLOYMENT CONTRACTS

Section 10. If any provision of this Act or the application thereof to any person or circumstances shall be held invalid, the remainder of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby.

Approved: June 30, 1937

Section 11. This Act shall apply to all contracts entered into pursuant to this Act, whether such contracts were entered into before or after the effective date of this Act, and the provisions relating to the liability of representatives with respect to such contracts shall apply only to purchases or contracts entered into after the effective date of this Act.

Section 12. The provisions of this Act shall apply to any person who is engaged in interstate commerce, or in any industry or activity affecting interstate commerce, or to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 13. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 14. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 15. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 16. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 17. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

Section 18. The provisions of this Act shall apply to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest, and to any person who is engaged in any industry or activity which is necessary to the national health, safety or interest.

