

Subdivision 2. Nothing in this act shall authorize the county auditor to enter omitted property on the assessment and tax books more than six years after May first of the year in which the property was originally assessed or should have been assessed and nothing in this act shall authorize the county auditor to correct the valuation or classification of real property as herein provided more than one year after May first of the year in which the property was assessed or should have been assessed.

Subdivision 3. Nothing in this act shall affect any rights in undervalued or erroneously classified property, acquired for value in good faith prior to the correction of the assessed value thereof by the county auditor as provided in this section. Any person whose rights are adversely affected by any action of the county auditor as provided in this subdivision may apply for a reduction of the assessed valuation under the provisions of Mason's Supplement 1940, Section 1983, as amended by Laws 1941, Chapter 454, Section 1, relating to the powers of the Commissioner of Taxation.

Approved April 24, 1943.

CHAPTER 633—H. F. No. 303.

(AMENDING SECTIONS 176.19; 176.01 AND 176.66 MINNESOTA STATUTES 1941.)

An act relating to workmen's compensation, defining and regulating occupational diseases; amending Mason's Statutes of 1927, Section 4283, Subdivision (4); Section 4326, Subdivision (H); and amending Mason's Minnesota Statutes of 1927, Section 4327, Subdivisions 1, 2, 3, 4, 5, 6, 7, 10 and 11, and repealing Mason's Statutes of 1927, Section 4327, Subdivision (8), and Mason's Supplement 1940, Section 4327, Subdivision (9).

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Law amended.**—Mason's Statutes of 1927, Section 4283, Paragraph (4), is amended to read as follows:

“4283. **Examination and verification of injury.**—(4) In all death claims where the cause of death is obscure or disputed, any interested party, including the Medical Board provided for in Section 11, may request an autopsy and, if denied, the commission shall, upon petition and proper showing, order the same. If any dependent claiming compensation or benefits does not consent to

such autopsy within the time fixed by the commission in such order, all dependents shall forfeit all rights to compensation. The cost of such autopsy shall be borne by the party demanding the same."

Sec. 2. **Law amended.**—Mason's Statutes of 1927, Section 4326, Paragraph (h), is amended to read as follows:

"(h) **Definitions.**—The word 'accident' as used in the phrases 'personal injuries due to accident' or 'injuries or death caused by accident' in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body, and occupational disease as defined in paragraph (n)."

Sec. 3. **Law amended.**—Mason's Statutes of 1927, Section 4326, is amended by adding a new paragraph thereto, designated (n):

"(n) **Definitions.**—The words 'occupational disease' mean a disease arising out of and in the course of employment peculiar to the occupation in which the employee is engaged and due to causes in excess of the hazards ordinary of employment. Ordinary diseases of life to which the general public is equally exposed outside of employment are not compensable, except where such diseases follow as an incident of an occupational disease, or where the exposure peculiar to the occupation makes such disease an occupational disease hazard. A disease arises out of the employment only if there be a direct causal connection between the conditions under which the work is performed and if the occupational disease follows as a natural incident of the work as a result of the exposure occasioned by the nature of the employment. An employer is not liable for compensation for any occupational disease which cannot be traced to the employment as a direct and proximate cause and is not recognized as a hazard characteristic of and peculiar to the trade, occupation, process, or employment or which results from a hazard to which the workman would have been equally exposed outside of the employment.

"(o) Prior legislative enumerations of occupational disease shall not entitle any employee afflicted with such disease to a presumption that the same is in fact an occupational disease."

Sec. 4. **Law amended.**—Mason's Statutes of 1927, Section 4327, is amended to read as follows:

"4327. **Occupational diseases—how regarded—disability—disablement.**—*Subdivision 1.* The disablement of an employee resulting from an occupational disease, except where specifically

otherwise provided, *is to be treated as the happening of an accident within the meaning of the workmen's Compensation Law and the procedure and practice provided applies to all proceedings under this section, except where specifically otherwise provided herein. When used in this section, 'disability' means the state of being disabled from earning full wages at the work at which the employee was last employed and 'disablement' means the act of becoming so disabled.*

Subdivision 2. Disability or death caused by disease.—If an employee is disabled or dies and his disability or death is caused by a *compensable occupational disease*, he or his dependents are entitled to compensation for his death or for the duration of his disability according to the provisions of this act, except as otherwise provided in this act. *If it be determined that such employee is able to earn wages at another occupation which is not unhealthful or injurious and such wages do not equal his full wages prior to the date of his disablement, the compensation payable is to be 66 2/3 per cent of the difference between the daily wage of the workman at the time of disablement and the daily wage he is able to earn in his partially disabled condition, continuing for a period of not longer than 25 weeks.*

Subdivision 3. Disease must have been contracted within months—exceptions.—*Neither the employee nor his dependents are entitled to compensation for disability or death resulting from occupational disease, unless such disease is due to the nature of his employment as defined in Section 3, paragraph (n) of this act and was contracted therein within twelve months previous to the date of disablement; except in the case of silicosis or asbestosis, in which cases the disease must have been contracted within three years previous to the date of disablement.*

Subdivision 4. False representation as to disease.—If an employee, at the time of his employment, wilfully and falsely represents in writing that he has not previously suffered from the disease which is the cause of disability or death, no compensation is payable.

Subdivision 5. Apportionment of compensation recoverable.—The total compensation due for occupational disease is recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation, as provided by this subdivision may appeal to the commission for an apportionment of such compensation among the several employers

who, since the contraction of such disease, employed such employee in the employment to the nature of which such disease was due. Such apportionment is to be proportioned to the time such employee was employed in the service of such employers provided, that if a prior employer has met the requirement as to minimum standards herein provided for and has been certified by the Industrial Commission to that effect, that then the Commission shall take into consideration in the apportionment of such liability not only the period of service of said employee with such employer, but shall likewise consider the element of exposure to which the employee was subjected while in the service of such employer maintaining minimum standards, and the apportionment determined only after a hearing, notice of the time and place of which is to be given to each employer alleged to be liable for any portion of such compensation. If the commission find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total compensation, as provided by this subdivision, it shall make an award accordingly in favor of the last employer, which may be enforced in the same manner as an award for compensation.

Subdivision 6. Notice of death of disability—to whom given.—The employer to whom notice of death or disability is to be given or against whom claim is to be made by the employee is the employer who last employed the employee during the 12 months in the employment to the nature of which the disease was due and in which it was contracted *except in cases of silicosis or asbestosis, in which case the period shall be three years*, and such notice is effective as against prior employers.

Subdivision 7. Information required to be furnished.—The employee or his dependents, if so requested, shall furnish the last employer, or the commission, with such information as to the names and addresses of his other employers during the periods as provided in subdivision 6, as he or they may possess. If such information is not furnished or is wilfully withheld and such last employer is for that reason unable to take proceedings against a prior employer under subdivision 5, unless it be established that the disease was contracted while the employee was in his employment, such last employer is not liable to pay compensation; or, if such information is not furnished or is not sufficient to enable such last employer to take proceedings against other employers under subdivision 5 such last employer is liable only for such part of the total compensation as, under the particular circumstances, the commission deems just; but a false statement in the information so furnished does not impair the employee's rights unless the last employer is prejudiced thereby.

Subdivision 8. Rights of employee to recover compensation for other diseases not effected.—Nothing in this section *affects* the rights of an employee to recover compensation in respect to a disease to which this section does not apply if the disease is an accidental personal injury within the meaning of the other provisions of this act.

Subdivision 9. Provisions not retroactive.—The provisions of this act *do not* apply to disability or death resulting from a disease contracted prior to the date on which this act takes effect, *unless such disease is determined to be an occupational disease under the terms of this act and was compensable at the time it was contracted or in cases of silicosis or asbestosis as herein provided.*

Sec. 5. Law repealed.—Mason's Statutes of 1927, Section 4327, Paragraph (8), is hereby repealed.

Sec. 6. Law repealed.—Mason's Statutes of 1927, Section 4327, Paragraph (9), as amended by Laws 1939, Chapter 306, is hereby repealed.

Sec. 7. Occupational disease aggravated by other disease or infirmity.—*Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disease or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or contributed to by an occupational disease, the percentage of such contribution to be determined by the Medical Board, the compensation payable is to be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disease or death, as such occupational disease, as a causative factor, bears to all the causes of such disease or death. No compensation shall be payable for occupational disease where the employee refuses or wilfully fails to use standard safety appliances, ordered and provided for his protection and use, and approved by the commission, or who wilfully refuses to obey reasonable rules prescribed, printed and posted by the commission for the conduct of the work or to perform a statutory duty. Failure of an employer to maintain minimum standards of safety and healthful working conditions as provided by the orders of the commission, or to post and order compliance with all reasonable rules prescribed and ordered by the commission for the conduct of the particular work shall constitute a violation of Mason's Minnesota Statutes of 1927, Section 4160. The commission shall each year certify any place of employment which has complied with the minimum standards for healthful working conditions as prescribed by the commission.*

Sec. 8. Evidence—presumptions.—*In the absence of conclusive evidence in favor of an employee's or a dependent's claim*

of disability or death from silicosis or asbestosis it shall be presumed not to be due to the nature of any occupation or employment within this act unless during the ten years immediately preceding the date of disablement the employee shall have been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five years, the last three years of which exposure shall have been in this state.

In cases of silicosis or asbestosis complicated with tuberculosis of the lungs causing total disability or death compensation is payable as and for uncomplicated silicosis or asbestosis when the silicosis or asbestosis is an essential factor in causing such complications of tuberculosis of the lungs. In cases of complications with other diseases than tuberculosis of the lungs compensation shall be proportioned as provided in section 7.

Where the medical board finds that an employee is afflicted with an occupational disease to such a degree that it is unduly hazardous for such employee to continue in any employment involving the hazard of exposure to such occupational disease, or where for other causes the medical board decides it is medically inadvisable and unduly hazardous for such employee to continue in an employment involving such hazard of occupational disease, the commission shall order the removal of such employee from such hazardous employment.

An employee so removed is eligible for retraining for a new occupation and compensation during such retraining, as provided by the workmen's compensation law. In the event retraining benefits are not accepted by such employee he is to be compensated during his period of unemployment following such removal as though he were wholly or partially disabled by reason of compensable injury, but such compensation shall not exceed a period of 25 weeks following the date of the order so removing such employee. In the event an employee is disabled, by reason of compensable injury, at the time an order for his removal is issued, the benefits provided by this section attach and begin at the termination of such period of compensable disability and constitute additional benefits. In the event retraining of the employee is undertaken during the period of such partial disability compensation is not to continue beyond 25 weeks from the date when such retraining is begun.

If an employee, after being so removed from hazardous employment, returns to such hazardous employment exposing him to any occupational disease, without the consent of the commission, neither he nor his dependents are entitled to compensation for the disablement or death of such employee caused by occupational disease.

An employee so removed from employment is entitled to compensation for disability, or his dependents to compensation for his death, from occupational disease, if such disablement of the employee occurs within three years, in case of silicosis or asbestosis, or within one year, in case of other occupational diseases, from the date of such employee's last exposure to the hazards of such occupational disease prior to such removal.

Sec. 9. Employee may waive full compensation.—*Subject to the approval of the commission on recommendation of the medical board, an employee affected by occupational disease, as an alternative to a forced change of occupation, may waive, in writing, full compensation for any aggravation of his condition resulting from his continuing in hazardous employment. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. In such cases compensation and medical benefits for later resulting disability or death from such disease is not to continue beyond 100 weeks.*

Sec. 10. Must serve notice within 90 days.—*Any claim for occupational disease is barred unless within 90 days after disablement of an employee as defined in Section 4527, subdivision 1, notice thereof in accordance with Section 4280 shall have been given to the employer, and unless the claim is filed with the commission within one year after the date of the employee's last exposure or within one year after the date of the last payment of compensation by the employer, or default in payment of compensation for occupational disease, except that in case of silicosis or asbestosis the claim may be filed with the commission within three years after the date of employee's last exposure or within three years of the date of the last payment of compensation by the employer, or his default in payment. If disablement occurs within the last 90 days allowed by this section for filing claim with the commission, then the employee or his dependents shall be allowed a period of 90 days from the happening of such disablement to comply with the provisions of this section.*

Compensation is not payable for partial disability from silicosis or asbestosis, except where such partial disability follows a compensable period of total disability. After the effective date of this act, in the event of total disability or death from silicosis or asbestosis, compensation is to be paid during a transition period according to the following formula: if such total disability or death results during the first calendar month after the effective date of this act, the total compensation payable for such disability or death, or both shall not exceed \$500.00; thereafter, the limit on the total compensation payable for total disability or death increases at the rate of \$50.00 per month, in each case such total is limited, pur-

suant to such formula, according to the month in which incapacity or death occurs. The liability of the employer to furnish medical benefits to the employee does not continue beyond the date when the last compensation is payable pursuant to such formula. Such progressive increase in the limits to the aggregate compensation and benefits for disability or death continues until the limits upon such benefits, as provided in the Workmen's Compensation Act, is reached.

“Sec. 11. Hearings—evidence—findings.—Upon the filing with the commission of a claim petition by an employee or his dependents, claiming and demanding compensation and benefits as for occupational disease, if such claim petition and the answer thereto, filed with the commission, presents or raises a controverted medical question and in addition other questions of liability, the commissioner shall first cause the petition and answer to be heard by the commission, a commissioner or referee, according to established practice, and permit all interested parties an opportunity to produce evidence relating to any issue involved except the controverted medical question; as to such question each party to the proceeding shall be permitted to take the testimony of one physician. Upon the completion of the taking of such evidence, the commission, commissioner or referee shall make findings of fact and conclusions of law on all issues involved excepting that of occupational disease. If such findings of fact and conclusions of law are adverse to the claim of the petitioner and the claim denied, there shall be an end to the matter, except as to such further proceeding as may be had by the aggrieved party in the exercise of his right of appeal. If such finding and conclusion are in favor of the petitioner or if no questions other than that of occupational disease is presented by the pleadings, the commission, commissioner or referee shall forthwith appoint a medical board of three doctors of medicine selected from a panel of fifteen nominees chosen by the Dean of the College of Medicine of the University of Minnesota, the Council of the Minnesota State Medical Association and the Governor of Minnesota. Ten of these nominees shall be doctors of medicine with at least five years' experience in the diagnosis, treatment and care of industrial diseases, and five of these nominees shall be doctors of medicine with at least five years' specialization in the field of X-ray diagnosis and treatment. The medical board shall be appointed in the following manner: The Commission shall furnish to each party to the proceeding a copy of the panel of doctors, together with a request that each party select one doctor of medicine from said panel and that the two doctors of medicine so selected shall choose a third doctor of medicine to constitute the medical board. The three doctors of medicine so agreed upon shall be appointed by the Commission as the medical board. If within ten days after such request the parties to the proceeding fail to

make their individual selections from the panel, or the two doctors of medicine thus selected fail to agree upon a third to be chosen, the commission, commissioner or referee shall forthwith appoint such additional number of doctors of medicine from said panel as may be necessary to constitute a medical board of three members.

The medical board shall determine such medical questions raised by the pleadings and such as are certified to it by the commission. Its findings among others shall state whether the employee is affected with an occupational disease as claimed in his petition, and whether such disease is an occupational disease within the provisions and definitions of occupational disease as contained in this act, the approximate dates said disease was contracted and the date of disablement of said petitioner. In case the claim is based on silicosis or asbestosis, at least one member of the medical board shall be a physician skilled and specializing in X-ray diagnosis and treatment.

The medical board may examine the employee, including X-ray examinations, hear and examine witnesses on controverted medical issues, and make such other examinations as it deems necessary to a full presentation and understanding of the medical issue before them. Either the employer or the employee may be represented at the examinations of the employee and hearings before the medical board by the same physician who appeared for such party at the hearing before the referee and such doctor shall be given full opportunity to participate therein. If the employee refuses to be examined by the medical board, no compensation shall be paid to such employee by the employer, and the proceedings shall be suspended, during the period such refusal continues.

The medical board shall, immediately after the conclusion of such examinations and hearings, file its findings and conclusions with the commission, signed by all the members of said board participating. If any member fails to sign the report of the board he shall state in writing to the commission his reasons therefor. The report of the medical board shall include the names of the doctors who appeared at such examinations and hearings and such medical reports and exhibits as were considered by it. The findings and conclusions of the medical board, in so far as the same concern such controverted medical questions, shall be adopted by the commission as its decision on such questions.

Sec. 12. Investigations.—When it appears to the medical board or to the state board of health that conditions exist which require investigation in order to determine the advisability of allowing or permitting an employee to continue in his hazardous employment, it shall file with the commission a petition demand-

ing that the commission proceed to make such investigation, which may include examinations by a member of the medical board and the holding of such hearings as may be necessary to such determination. Such investigation may also be initiated by the commission, or by petition of any employee or employer. The commission shall proceed promptly, after the filing of such petition or upon its own motion, with such investigation.

Sec. 13. Employees to submit to medical examination.—*Each employee, hereafter entering the service of an employer whose business is one in which the hazard of silicosis or asbestosis is involved, who will be exposed to such hazard because of such employment, shall at the request of the employer, submit to a medical examination for the purpose of determining whether such employee can safely be employed in such hazardous employment. The cost of such medical examination shall be borne by the employer.*

Within one year after the effective date of this act, and annually thereafter, each employee engaged in employment which exposes him to the hazards of silicosis or asbestosis shall submit to a medical examination for the purpose of determining whether he is affected in any degree by silicosis or asbestosis, or peculiarly or especially susceptible to either of such diseases. The cost of such examination shall be equally divided between the employer and the employee. The findings and reports of the doctor making each such examination, together with X-ray and other original exhibits, shall be filed in the office of the commission, and available to the department of health. Any such report is a public record, but may be used only for the purposes of this act.

Upon the termination of an employee's service the employer may request employee to submit to a final medical examination by giving the employee leaving his service ten (10) days notice in writing of the time and place that the medical examination is to be made, which notice may be delivered to such employee personally or mailed to his last known address. Any employee who wilfully fails or refuses to submit to such medical examination upon leaving the service of an employer, shall thereby waive any right to compensation from such employer for such occupational disease which later develops. The employer shall forthwith notify the commission in writing, of the employee's failure to submit to such medical examination, and such notice shall be filed in the office of the commission as in the case of medical reports, and shall serve as notice of termination of liability of such employer arising out of any claim by such individual, or by a subsequent employer because of the claim of such individual. The cost of such examination shall be borne by the employer.

Sec. 14. Regular inspection.—*The commission shall keep a record of employments and regularly inspect places of employment in any industry in which the hazard of an occupational disease may exist. It shall establish reasonable minimum standards of safety and healthful working conditions in such places of employment and shall furnish such employers with written rules and regulations governing the maintenance of such minimum standards of working conditions. The commission in preparing such rules, regulations or standards, relating to health, or in evaluating industrial health hazards, shall consult with the state department of health through its division of industrial health.*

Sec. 15. Expenses—how paid.—*Any expense incurred by the commission in carrying out the purposes of this act shall be paid out of the general fund of the department of labor and industry.*

Sec. 16. Commission to make rules.—*The commission shall make such rules, regulations and orders with reference to procedure as it deems necessary not inconsistent with this act.*

Approved April 24, 1943.

CHAPTER 634—H. F. No. 414.

(AMENDING SECTION 100.17 AND 100.18 MINNESOTA STATUTES 1941.)

An act relating to wild animals and the seasons and limits for upland game birds, amending Mason's Supplement 1940, Sections 5551 and 5552.

Be it enacted by the Legislature of the State of Minnesota:

Section 1. **Law amended.**—Mason's Supplement 1940, Section 5551, is hereby amended to read as follows:

5551. **Open season for certain game birds.**—Quail, partridges or ruffed grouse, and Chinese ringneck or English pheasants may be taken and possessed in such counties or areas of the state and in such numbers and during such times in the several counties or areas between September 16th and November 30th both inclusive and in any year in any county or area and subject to such other provisions not inconsistent with law as the Commissioner may by regulations from time to time prescribe according to the conditions existing in the respective counties or areas, but nothing in this chapter shall be construed to permit the taking or killing of Canada spruce grouse, or of wild turkeys. Prairie chicken