

MASON'S MINNESOTA STATUTES

1927

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EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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WILLIAM H. MASON,
Editor in Chief.

MARTIN S. CHANDLER,
RICHARD O. MASON,
Assistant Editors.

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The term "merchantable timber" means and includes all timber and all forest products (as above defined) having any commercial value.

The word "person" means and includes any natural person acting in his own right or in any representative capacity, and any corporation, firm, or association of whatever nature or kind; the masculine includes the feminine, and the singular includes the plural, wherever the context so requires to give full force and effect to all the provisions of this act.

The word "owner" means and includes the person or persons owning the fee title to any tract of land but

does not include an owner of timber thereon or of minerals or any other thing therein when such ownership is separate from the ownership of the surface.

The word "commissioner" means the commissioner of forestry and fire prevention of the state of Minnesota and his successor in authority.

The term "register of deeds" means and includes the register of deeds of the county in which the land referred to is situate, or the registrar of titles in case the title to the land has been registered. ('27, c. 247, § 13)

CHAPTER 23

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office of Commissioner of Labor is hereby abolished. ('21 c. 81 § 1)

4033. Industrial commission—There is hereby created a commission to be known as the "Industrial Commission of Minnesota," hereinafter called the Commission. The Commission shall be composed of three Commissioners who shall be appointed by the Governor by and with the advice and consent of the Senate. The first three Commissioners shall be appointed within thirty (30) days after the passage of this act and before the adjournment of the present legislature, if practicable. One shall be appointed for a term commencing March 15, 1921 and ending June 30, 1923; one for a term commencing March 15, 1921 and ending June 30, 1925; and one for a term commencing March 15, 1921 and ending June 30, 1927; and thereafter each Commissioner shall be appointed for a term of six years. Not more than two Commissioners shall belong to the same political party. Inasmuch as the duties to be performed by such Commission vitally concern the employers, employes, as well as the whole people of the state, it is hereby declared to be the purpose of this act that persons be appointed as Commissioners who shall fairly represent the interests of all concerned in its administration. Any vacancy on the Commission shall be filled by the Governor by and with the advice and consent of the Senate for the unexpired portion of the term in which the vacancy occurs. ('21 c. 81 § 2)

4034. Salaries — Chairman — Each Commissioner shall receive an annual salary of \$4,500, payable in the same manner that other state salaries are paid. Each Commissioner shall devote his entire time to the duties of his office. The Commissioner whose term first expires shall be chairman. Each Commissioner, before entering upon the duties of his office, shall take the oath prescribed by law. ('21 c. 81 § 3)

4035. Governor may remove—The Governor may at any time remove a Commissioner for inefficiency, neglect of duty, or malfeasance in office. Before such removal he shall give such Commissioner a copy of the charges against him and fix a time when he shall be heard in his own defense, which shall not be less than ten days thereafter, and such hearing shall be open to the public. If such Commissioner shall be removed, the Governor shall file in the office of the Secretary of State a complete copy of all the charges made against such Commissioner and his findings thereon, with a record of the proceedings. Such power of removal shall be absolute and there shall be no right of review in any court whatsoever. ('21 c. 81 § 4)

4036. Commissioners or employes not to take part in political campaigns—Every Commissioner and every officer or employe of the Commission, who by solicitation or otherwise exerts his influence, directly or indirectly, to induce other officers or employes of the state to adopt his political views, or to favor any particular person or candidate for office, or to contribute funds for campaign or political purposes, shall be removed from his office or position by the authority appointing him. ('21 c. 81 § 5)

4037. Office in St. Paul—The Commission shall keep its office at St. Paul and shall be provided by the custodian of state property with suitable rooms and necessary furniture. The Commission may, however, hold sessions at any other place in the state when the convenience of the Commission and the parties interested so requires. ('21 c. 81 § 6)

4038. Organization—Quorum—Upon the taking effect of this act, the Commission shall meet at the state capitol and organize. A majority of the Commission-

ers shall constitute a quorum for the exercise of the powers conferred and the duties imposed on the Commission. A vacancy shall not impair the right of the remaining Commissioners to exercise all the powers and perform all of the duties of the Commission. ('21 c. 81 § 7)

4039. Hours public sessions—Proceedings—The Department of Labor and Industries shall be open for the transaction of business during all business hours of each and every day, excepting Sundays and legal holidays. The sessions of the Commission shall be open to the public and may be adjourned from time to time. All the proceedings of the Commission shall be shown on its records, which shall be public records. ('21 c. 81 § 8)

4040. Seal—Certified copies—The commission shall have a seal for the authentication of its orders and proceedings, upon which shall be inscribed the words, "Industrial Commission of Minnesota — Seal", and such other design as the Commission may prescribe. The courts of this state shall take judicial notice of such seal and of the signatures of the chairman and the Secretary of the Commission; and in all cases copies of orders, proceedings, or records of the Commission, certified by the Secretary of the Commission under its seal, shall be received in evidence, with the same force and effect given to the originals. ('21 c. 81 § 9)

4041. Secretary—Salary—Duties—The Commission shall appoint a Secretary, who shall receive an annual salary not exceeding \$3,500, and who shall hold office at the pleasure of the Commission. It shall be the duty of the Secretary to keep a full and true record of all proceedings of the Commission, to issue all necessary processes, writs, warrants and notices which the Commission is required or authorized to issue, and generally to perform such other duties as the Commission may prescribe. ('21 c. 81 § 10)

4042. May appoint division heads, assistants, etc.—Salaries—Duties—The Commission may appoint with complete and absolute power of removal such division heads or chiefs, deputy division heads or chiefs, managers, assistant managers, superintendents, officers, agents, architects, accountants, experts, engineers, physicians and referees as may be necessary for the exercise of its powers and the performance of its duties; and subject to the provisions of General Statutes 1913, Sections 3813, 3814, 3815, 3816, which shall be applied as far as applicable may also appoint such statisticians, inspectors, deputy inspectors and other employes and assistants as may be necessary for the exercise of its powers and the performance of its duties. The Commission shall prescribe the duties and fix the salaries of all such appointees which shall not exceed in the aggregate the amount appropriated by the legislature for that purpose. All persons holding positions in the Department of Labor and Industries or under the State Board of Arbitration on June 1st, 1921, shall be transferred by the Commission to the Department of Labor and Industries as herein constituted, and assigned to such positions and duties as the Commission may designate. ('21 c. 81 § 11)

Explanatory note—Of the provisions referred to herein (G. S. 1913, §§ 3813 to 3816), section 3813 is superseded by §§ 4032, 4033, 4042, herein; section 3814 is set forth herein as § 4048; sections 3815, 3816 are omitted as temporary.

4043. Traveling expenses—The Commission and the officers, assistants and employes of the Commission shall be paid out of the State treasury their actual and necessary expenses while traveling on the business of the Commission. Vouchers for such expenses

shall be itemized and sworn to by the persons incurring the expense, and be subject to the approval of the Commission. ('21 c. 81 § 12)

4044. Powers of department of labor and industries transferred to commission—On and after June 1, 1921, the Commission shall possess all the powers and perform all the duties now conferred and imposed by law on the Department of Labor and Industries and the State Board of Arbitration except that any power or duty vested in the Commissioner of Labor at the time of the taking effect of this act and requiring individual action, shall, on the taking effect of this act, be exercised or performed by such member of the Commission, or officer or employe of the Department, as shall be designated by the Commission. The State Board of Arbitration, as now constituted, is hereby abolished. ('21 c. 81 § 13)

4045. Divisions—The Department of Labor and Industries shall consist of the following divisions, to-wit: Division of Workmen's Compensation, Division of Boiler Inspection, Division of Accident Prevention, Division of Statistics, Division of Women and Children, Division of Employment, Division of Mediation and Arbitration, and such other divisions as the Commission may deem necessary and establish. Each Division of the Department and persons in charge thereof shall be subject to the supervision and direction of the Commission and of any Commissioner assigned to supervise the work of such division, and, in addition to such duties as are or may be imposed on them by statute, shall perform such other duties as may be assigned to them by the Commission. ('21 c. 81 § 14)

4046. Powers and duties—The Commission shall have the following powers and duties:

(1) To exercise such powers and perform such duties concerning the administration of the Workmen's Compensation Laws of the state as may be conferred and imposed on it by such laws.

(2) To exercise all powers and perform all duties now conferred and imposed on the Department of Labor and Industries as heretofore constituted, and the bureaus of such department, so far as consistent with the provisions of this act.

(3) To establish and conduct free employment agencies, and after the first day of June, 1921, to supervise the work of private employment offices all as now provided by law; to make known the opportunities for self-employment in this state, to aid in inducing minors to undertake promising skilled employments, to encourage wage earners to insure themselves against distress from unemployment, to investigate the extent and causes of unemployment in the state and remedy therefor, and to devise and adopt the most efficient means in its power to avoid unemployment.

(4) To promote the voluntary arbitration, mediation and conciliation of disputes between employers and employes in order to avoid strikes, lockouts, boycotts, blacklists, discriminations and legal proceedings in matters of employment. In pursuance of this duty it may appoint temporary boards of arbitration or conciliation, provide the necessary expenses of such boards, order reasonable compensation not exceeding \$15.00 per day for each member engaged in such arbitration or conciliation, prescribe rules of procedure for such arbitration or conciliation boards, conduct investigations and hearings, issue or publish statements, findings of facts, conclusions, reports and advertisements, and may do all other things convenient and necessary to accomplish the purposes directed in this act. The Commission may designate a subordinate to be known as Chief Mediator and may detail other as-

sistants or employes for the purpose of executing these provisions, without extra compensation. In order to carry out the provisions of this subsection, the Industrial Commission, or any Commissioner thereof, the Chief Mediator or any temporary board of conciliation or arbitration, shall have power to administer oaths to witnesses, and to issue subpoenas for the attendance of witnesses; and if any person refuses to comply with any subpoena issued by the Commission, a Commissioner, the Chief Mediator or a temporary Board of Conciliation or Arbitration, or if any witness refuses to testify regarding that about which he may be lawfully interrogated, the judge of any district court of any county in the state, on application of the Commission or of a Commissioner, shall compel obedience by attachment proceedings as for contempt, as in the case of the disobedience of a subpoena issued by such court.

(5) To adopt reasonable and proper rules and regulations relative to the exercise of its powers and duties, and proper rules to govern its proceedings and to regulate the mode and manner of all investigations and hearings. But such rules and regulations shall not be effective until ten days after their adoption. A copy of such rules and regulations shall be delivered to every citizen making application therefor.

(6) To collect, collate and publish statistical and other information relating to the work under its jurisdiction and to make public reports in its judgment necessary. On or before the first Monday in January of each year the Commission shall report its doings, conclusions and recommendations to the Governor, which report shall be printed and distributed biennially to the members of the Legislature and otherwise as the Commission may direct.

(7) To establish and maintain branch offices as needed for the conduct of its affairs. ('21 c. 81 § 15)

4047. Inconsistent acts repealed—All acts and parts of acts inconsistent with the provisions of this act are hereby repealed. ('21 c. 81 § 16)

State Board of arbitration continued to June 1, 1921. '21 c. 158.

4048. Qualifications of inspectors—No person shall be eligible to appointment as a chief factory inspector, elevator inspector, railroad inspector or factory inspector in the department of labor who is not possessed of practical experience and knowledge in and of the operation of such machinery, appliances and work places as he may be called upon to inspect; and every person desiring such an appointment shall be required to pass such a competitive examination touching his general qualifications and his knowledge of the trade and technical phases of the work required in such position as may be deemed necessary by the board of examiners to the proper discharge of the duties of such position. No person shall be appointed to the position of deputy labor commissioner who is not possessed of such qualifications as the board of examiners may determine necessary. No person shall be appointed superintendent of the bureau of women and children who is not competent to investigate and report to the commissioner of labor upon the conditions under which women and children are at work in all factories, workshops, hotels, restaurants, mercantile establishments and other places where women and children are employed, with such recommendations as will promote the health and welfare of the women and children so employed in this state. No person shall be appointed as a local manager or other employe of the state free employment offices who is not possessed of such knowledge as the board of examiners may

deem necessary for the proper fulfillment of the duties of such position. No person shall be competent for appointment as statistician in the department of labor who has not demonstrated his competency to the satisfaction of the board of examiners, by his fulfillment of similar duties at a previous time, or, in the absence of, or in addition to previous experience, cannot satisfactorily pass such examination as the board of examiners shall provide for the filling of such statistical position. Experts and special agents appointed by the commissioner to assist in statistical or investigation work shall have such qualifications and pass such examinations as the board of examiners may specify. The commissioner of labor shall be empowered to temporarily appoint properly qualified persons who have not passed such examinations as are provided in sections 2 and 3 of this act for a period of not to exceed sixty (60) days duration. Provided, that such appointments may not be renewed at the expiration of said sixty (60) days unless such appointee has passed the regular examination for such position. No person shall be eligible to appointment to any position in the department of labor, who, in addition to passing such examinations or meeting such requirements as are specified by law, is unable to satisfy the board of examiners and the appointing officers of his moral, mental and physical fitness to hold such position. ('13 c. 518 § 3) [3814]

4049. Terms defined—The words "factory" and "mill," as used in this chapter, shall mean any premises where water, steam, electrical or other mechanical power is used in the aid of manufacturing or printing process there carried on. The term "workshop," as so used, shall mean any premises, room or place, not factory or mill as above defined, wherein manual labor is exercised by way of trade or for purpose of gain in or incidental to a process of making, altering, repairing, cleaning, ornamenting, finishing or adapting for sale or use any article or part thereof. The term "engineering work," as so used, shall mean any work of construction, operation, alteration, or repair of a railroad or street railway, of the works or offices of any gas, telephone, telegraph, water, electric light, or mining company, or upon any sewer, bridge, tunnel, or building. The term "mercantile establishments" shall mean any wholesale or retail establishment, theater, bowling alley, pool room or other place of amusement, hotels, restaurants, photograph galleries, warehouses. But nothing herein shall interfere with the powers conferred by law upon the railroad and warehouse commissioners or the county mine inspectors. ('13 c. 518 § 7) [3818]

Workshops (111-275, 126+903).

4050. Enforcement of labor laws by labor department—The department shall enforce all laws regulating the employment of minors and women, the protection of the health, lives, limbs, and rights of the working classes, and those prescribing the qualifications of persons in trades and crafts, and shall be clothed with the same powers for the enforcement of the compulsory education and truancy laws as those conferred on truant officers by section 1448, Revised Laws of 1905. It shall be empowered to gather statistics relating to all branches of labor, to labor troubles and unions, and to the economic and social conditions of the laboring classes. In the discharge of its duties the members and employes of the department may enter any factory, mill, work shop, warehouse, mercantile establishment, office, engineering work or other place where persons are employed, or any office from

which such place of employment is directed or managed, at all reasonable times, give such direction as may be necessary to enforce the laws, and remain while engaged in their official duties. They may also enter any place where intoxicating beverages are sold, for the purpose of enforcing the child labor and school attendance laws or other duties imposed upon them. Any members of the department of labor and industries may issue subpoenas and take testimony, and compel the attendance of witnesses, and shall have authority to administer oaths and take testimony under oath, but no person shall be compelled to attend as a witness unless he is paid the fees provided for witnesses in the district court.

The bureau of women and children shall have power to enforce and cause to be enforced, by complaint in any court or otherwise, all laws and local ordinances relating to the health, morals, comfort and general welfare of women and children. ('13 c. 518 § 8, amended '19 c. 110 § 1) [3819]

Explanatory note—For R. L. '05, § 1448, see § 3087, herein.

ELEVATORS.

4051. Operation of elevators—In any building occupied in whole or in part for factories, workshops, or offices, by two or more tenants, and in which building two or more tenants use jointly the same elevator for the purpose of moving persons or freight from one floor to another, it shall be the duty of the owner of such building to provide a competent person or persons to regularly operate such elevator, and no other person shall operate such elevator. Provided, that such owner may arrange by agreement with one or more of such tenants to provide a regular operator or operators to run such elevator. ('19 c. 483 § 1)

4052. Lock or fastening device—Every elevator or the entrance to such elevator in any building mentioned in section 1 shall be provided with a lock or fastening device which shall prevent the use of such elevator except by a person authorized to operate the same, and such lock or fastening device shall be applied by the operator to the controlling apparatus or gate of such elevator before leaving the elevator without an authorized attendant. ('19 c. 483 § 2)

4053. Inspection by labor commissioner—It shall be the duty of the commissioner of labor and his assistant, whenever they find an elevator in use in violation of this act, to seal the entrances of such elevator and attach a notice forbidding the use of such elevator until the provisions of this act are complied with. Any person, firm or corporation who violates any of the provisions of this act, or who removes any seal or notice forbidding the use of such elevator except by authority of the commissioner of labor, or who operates such elevator after a notice has been attached forbidding the use of such elevator except after such notice has been removed by authority of the commissioner of labor, shall be guilty of a misdemeanor, punishable by a fine or imprisonment. ('19 c. 483 § 3)

FOUNDRIES.

4054. Definition of terms—An iron or steel foundry shall mean a place where iron or steel or both metals are melted and poured into sand molds in the making of castings, together with all cleaning, core-making, drying, and wash rooms and toilet rooms used in connection therewith.

The term "entrance" as used in this act shall mean main doorways opening directly to the outer air.

The term "gangway" as used in this act shall mean well-defined passageways dividing the working floors of foundries, but not the spaces between molds. Spaces between molds shall be divided into three classes, which shall be known as "bull-ladle aisles," "hand ladle aisles" and "buggie-ladle aisles." ('19 c. 84 § 1)

4055. Exemption of foundries—Except as otherwise specified, the provisions of this act shall, as to the subjects covered herein, exempt foundries from the laws relating to factories and workshops. ('19 c. 84 § 2)

4056. Protection of entrance to foundries—Entrances to foundries shall be protected from November first to April first of each year by a covered vestibule, either stationary or movable, which shall be so constructed as to eliminate drafts and of such dimensions as to answer ordinary purposes, such as the passage of wheel-barrows, trucks, and small industrial cars. Provided, this shall not apply to entrances used for railroad or industrial cars handled by locomotives or motors, or for traveling cranes; or for vehicles, or for large industrial cars moved by hand; these entrances may remain open only for such time as is necessary for the ingress and egress of such cars, truck and trains.

No locomotive shall be permitted to remain inside the foundry during the loading or unloading of the cars. ('19 c. 84 § 3)

4057. Size of gangways, etc.—Main gangways where metal is carried by hand, bull or truck ladles shall be not less than five feet wide. Truck-ladle gangways which are not main gangways shall be not less than four feet wide. Bull-ladle aisles between floors shall be not less than three feet wide. Single hand-ladle or buggy-ladle aisles between floors shall be not less than eighteen inches wide. Where trolleys are used over molding floors for pouring metal, the aisles shall be of sufficient width to permit the safe ingress and egress of employes and the safe use of the ladles. The provisions of this section shall apply to all foundries hereafter established. In existing foundries, where it is impractical to widen the gangways and aisles to the width required in this section, the commissioner of labor, or assistants, may permit gangways and aisles to be of a narrower width. ('19 c. 84 § 4)

4058. Gangways to be kept free and material of which same are to be constructed—During the progress of casting, every gangway or aisle shall be kept entirely free from pools of water or obstructions of any nature. Every gangway where industrial tracks are used shall be constructed of a hard material of substantial character, and the top of the rails shall be flush with the floor. Every gangway shall be kept in a good and safe condition at all times. ('19 c. 84 § 5)

4059. Mechanical ventilation—Where smoke, steam, gases or dust arising from any of the operations of the foundry are dangerous to the health or eyes, and where a natural circulation of air does not carry off the greater part of such smoke, steam, gases, or dust, there shall be installed and operated adequate mechanical means of ventilation. ('19 c. 84 § 6)

4060. Molding room—The cleaning and chipping of castings shall be done in cleaning rooms, except that castings may, when necessary, be chipped or cleaned in the molding room or where cast, provided sufficient protection is furnished by the use of a curtain or screen, or some other means equally good, to protect employes therein.

This section shall not apply if mechanical appliances

are used for cleaning castings and the dust and particles arising therefrom are effectively removed. ('19 c. 84 § 7)

4061. Exhaust systems in tumbler mills—Where tumbler mills are used, exhaust systems shall be installed to effectively carry off the dust arising from the cleaning of castings, except where the mill is operated outside the foundry. This section shall not prohibit the use of a water barrel for cleaning castings. Sand blast operations shall be carried on in the open air or in a separate room used solely for that purpose. The milling of cupola cinders, when done inside the foundry, shall be carried on by an exhaust mill or water mill. ('19 c. 84 § 8)

4062. When compressed air can not be used—No cores shall be blown out of castings by compressed air unless such work is done outside of the foundry or in a special or dust proof enclosure. Employes engaged in cleaning castings by compressed air or sand blast shall wear eye guards and helmets, to be furnished by the employer. ('19 c. 84 § 9)

4063. Hoods and pipes to be supplied—When fumes, gases and smoke are emitted from drying ovens in such quantities as to be detrimental to the health or eyes of the employes, hoods and pipes or other adequate means of ventilation shall be provided. ('19 c. 84 § 10)

4064. Artificial light—Where natural light is insufficient to properly light the foundry, artificial light of sufficient power shall be provided.

The continuous use of hand torches or other lamps that emit injurious smoke and gases is prohibited. ('19 c. 84 § 11)

4065. Heat—Proper and sufficient heat shall be provided and maintained in every foundry. The use of the open Salamander stove, or stoves of that type, for heating purposes shall be prohibited, except in cases of emergency. ('19 c. 84 § 12)

4066. Drying of ladles—All hand and bull-ladles shall be dried outside of the foundry, or in accordance with section 6 of this act. A sufficient number of sheet iron shields shall be available in foundries for use in covering hand and bull-ladles. ('19 c. 84 § 13)

4067. Drying of clothes—Suitable facilities shall be provided for drying the clothing of such employes as may be found necessary. ('19 c. 84 § 14)

4068. Water closets—In every foundry where water closets or privy accommodations are permitted to remain outside of the foundry the passageway leading from the foundry to said water closets or privy accommodations shall be so constructed that the employes in passing thereto or therefrom shall not be exposed to outdoor atmosphere, and such passageways, water closets or privy accommodations shall be properly heated during cold weather. ('19 c. 84 § 15)

4069. Number of closets—Water closets shall be provided in every foundry and for each sex according to the following table:

Number of Persons	Number of Closets	Ratio
1 to 10	1	(1 for 10)
11 to 25	2	(1 for 12 1/2)
26 to 50	3	(1 for 16 2/3)
51 to 80	4	(1 for 20)
80 to 125	5	(1 for 25)

('19 c. 84 § 16)

4070. Individual lockers—Individual lockers, arranged for locking, shall be provided for employes, and shall be placed either in a room used exclusively for that purpose, in the wash room, in the drying room, or

at convenient places in the foundry. The necessity for individual lockers shall be determined by the commissioner of labor or his assistants. ('19 c. 84 § 17)

4071. Inspection of appliances—Ladles, shanks, tongs, slings and yokes, skimmers and slage hoes used in the pouring of molten metals shall, prior to their use, be inspected daily as their safety by the men preparing and using same; and in addition, a regular inspection, as to their safety shall be made once a month by a man designated for that purpose.

A monthly inspection shall also be made of the chains and cables on counterweights in connection with drying ovens, and reports of such inspection shall be made on prescribed forms and be kept on file for examination by the state factory inspector. ('19 c. 84 § 18)

4072. Breaking of castings prohibited—The breaking of castings by the use of a drop inside the foundry during the general working hours is prohibited. Where a drop is used for the breaking of castings or scrap outside of the foundry, a permanent shield of heavy planking or other adequate protection shall be provided. ('19 c. 84 § 19)

4073. Females not to be employed in core rooms—No female shall be employed in placing cores into ovens or in taking cores out of the ovens. ('19 c. 84 § 20)

4074. Number of pounds specified—No female employed in any core-making room shall be permitted to make or handle cores when the combined weight of core, core box and plate at which she is working shall exceed twenty-five (25) pounds. ('19 c. 84 § 21)

4075. Various definitions—A brass foundry shall mean a place where brass, aluminum, copper, tin, zinc, gold, silver or composition metals containing any of the foregoing metals are melted or poured into sand molds in the making of castings. Provided, that foundries where only aluminum is melted shall be covered by the provisions of this act governing iron and steel foundries.

The term "cellar," when used in this act, shall mean a room or part of a building which is one-half or more of its height below the level of the curb on the ground adjoining the building (excluding areaways).

The term "basement," when used in this act, shall mean a room or a part of a building which is one-half or more of its height above the level of the curb. ('19 c. 84 § 22)

4076. Application to brass foundries—The provisions of this act relative to dust, smoke, gases or fumes, ventilation, sanitation, heat, light, gangways and aisles, safety appliances, drying and locker accommodations, as specified for iron and steel foundries, shall apply to brass foundries. ('19 c. 84 § 23)

4077. Detail construction in brass foundries—In all brass foundries, when the crown plate of an upright melting furnace is elevated above the surrounding floor in excess of twelve inches, the furnace shall be equipped with a platform with a standard rail; such platform shall be constructed of metal or other fireproof material, and shall extend along the front and sides of the furnace, flush with the crown plate, and shall be at least four feet in width, and shall be clear of all obstructions during pouring time. If the platform is elevated above the floor in excess of twelve inches the lowering from same of crucibles containing molten metal shall be done by mechanical means.

Where the combined weight of crucible, tongs and molten metal exceeds two hundred fifty pounds, the same shall be removed from the furnace and deposited on the floor by mechanical means. ('19 c. 84 § 24)

4078. Protection for legs and feet—All persons removing pots containing molten metal from furnaces and handling same shall be provided with protection for legs and feet. ('19 c. 84 § 25)

4079. Gangways, etc.—In all brass foundries gangway dirt and floor scrapings shall not be riddled in the room where workmen are employed, unless they are so dampened as to prevent dust arising therefrom. ('19 c. 84 § 26)

4080. Casings for stoves—Stoves used for drying molds, when located in the rooms used by workmen, shall be surrounded by a casing of fireproof material to the full height of the stove. ('19 c. 84 § 27)

4081. Clearances—No brass foundry shall hereafter be constructed with a clearance of less than fourteen feet between the lowest point of the ceiling and the floor, except that where a peak, sawtooth, monitor or arch roof is constructed the side walls may be of a minimum height of twelve feet. ('19 c. 84 § 28)

4082. Reopening of foundries—In case any foundry that was legally operated in a cellar or basement on January 1, 1919, shall be discontinued or unused for a period of more than four consecutive months, it can thereafter be reopened as a foundry only by complying with all the provisions of this act relating to future foundries. The occasional operation of a foundry for the purpose of evading this section shall not be deemed a continuance of use thereof. ('19 c. 84 § 29)

4083. Commissioner of labor to enforce provisions—The commissioner of labor and his assistants shall enforce the provisions of this act. Any person, firm or corporation violating any of the provisions of this act shall, if after written notice by the commissioner of labor or his assistants, of such violation they shall not after thirty days have complied with such notice be guilty of a misdemeanor and shall be punished by a fine not exceeding one hundred (\$100) dollars or by imprisonment not exceeding ninety (90) days. If an employe neglects to use the devices furnished under the provisions of this act he shall be guilty of a misdemeanor, punishable by a fine not exceeding ten dollars or imprisonment for not exceeding ten days. ('19 c. 84 § 30)

THE DEAF

4084. Division for deaf—There shall be created in the bureau of labor a division devoted to the deaf. ('13 c. 238 § 1) [3828]

The bureau of labor having been abolished, the effect of this act is not clear.

4085. Chief of division—Duties—The commissioner of labor shall appoint a competent man to take charge of such division who shall devote his time to the special work of labor for the deaf, under the supervision of the commissioner. He shall collect statistics of the deaf, ascertain what trades or occupations are most suitable for them, and best adapted to promote their interest, and shall use his best efforts to aid them in securing such employment as they may be fitted to engage in.

He shall keep a census of the deaf and obtain facts, information and statistics as to their condition in life with a view to the betterment of their lot. He shall endeavor to obtain statistics and information of the condition of labor and employment and education of the deaf in other states with a view to promoting the general welfare of the deaf of this state. ('13 c. 238 § 2) [3829]

4086. Title of office—He shall be designated as chief of the bureau of labor for the deaf. ('13 c. 238 § 3) [3830]

HOURS OF, AND RESTRICTIONS ON, LABOR

4087. Ten hours to constitute one day's work, except persons over 16 years may labor extra hours for extra pay—Unless a shorter time be agreed upon, or be provided by law, the standard day's work for hire shall be ten hours. Every employer and other person having control who shall compel any person to labor more than ten hours in any one day, shall be guilty of a misdemeanor; but persons of sixteen years of age and over, unless expressly forbidden by law, may labor extra hours for extra pay; and this section shall not apply to farm laborers, to domestic servants employed by the week or month, or to persons engaged in the care of live stock. (R. L. '05 § 1798; G. S. '13 § 3831, amended '17 c. 248 § 1)

145-270, 177+344.

4088. Eight-hour labor law not to apply to road work—No person employed in manual labor upon any work for the state, whether such work be done by contract or otherwise, shall be required or permitted to labor more than eight hours in any calendar day except in cases of extraordinary emergency caused by fire, flood or danger to life and property, military or naval employment in time of war, and road work. (R. L. '05 § 1799; G. S. '13 § 3832, amended '21 c. 388 § 1)

4089. Eight hours to constitute day's labor by employes of state—Eight hours shall constitute a day's work for all laborers, workmen, mechanics, prison guards, janitors of public institutions, or other persons now employed or who may hereafter be employed by or on behalf of the state of Minnesota, except in cases of extraordinary emergency which may arise in time of war, or in cases where it may be necessary to work more than eight hours per calendar day for the protection of property or human life. ('19 c. 40 § 1)

4090. Stipulation in contracts—Every contract made by or in behalf of the state which may involve the employment of labor shall provide in terms for compliance with [R. L.] § 4088, and for the forfeiture by the contractor to the state of ten dollars for each and every violation thereof. Every inspector or other person whose duty it is to see that such contract is duly performed shall report all such violations to the proper disbursing officer, who shall withhold the amounts so forfeited from the contract price. No sum so withheld shall ever be paid unless the disbursing officer shall first certify to the governor, in writing, that the forfeiture was imposed through an error as to the facts. Every state officer, and every person acting for or in behalf of the state, who shall violate any provision of this section or § 4088, shall be guilty of a gross misdemeanor. (1800) [3833]

4091. Locomotive engineers, etc.—Hours—Locomotive engineers and firemen shall not be required to serve as such for more than fourteen consecutive hours. At least nine hours, or as many hours less as is asked for by said engineers or firemen, shall be allowed for rest before being again required to go on duty. But nothing herein shall permit any such engineer or fireman to desert his locomotive when, by reason of accident or of delay caused by the elements, another cannot immediately be procured to take his place, nor prohibit him, in any case, from serving longer than fourteen hours if he so desires. Every superintendent or other officer or employer of a railway company who shall order or require any service in violation of this section shall be guilty of a misdemeanor, and such company shall be liable to any en-

gineer or fireman for injuries sustained by him in consequence of such violation. (1801) [3834]

4092. Certain railroad employes—Hours—It shall be unlawful for any railroad company within the state of Minnesota, or any of its officers or agents, to require or permit any employe engaged in or connected with the movement of any rolling stock, engine or train, to remain on duty more than sixteen consecutive hours, or to require or permit any such employe who has been on duty sixteen consecutive hours to perform any further service without having had at least eight hours' rest, or to require or permit any such employe to be on duty at any time to exceed sixteen hours in any consecutive twenty-four hours; provided, however, that this section shall not apply to work performed in the protection of life or property in cases of accident, wreck or other unavoidable casualty; and, provided further, that it shall not apply to the time necessary for trainmen to reach a resting place when an accident, wreck, washout, snow blockade or other unavoidable cause has delayed their train. ('07 c. 253 § 1) [3835]

4093. Penalty for violation—Duty of railroad commission—Any officer of any railroad company in the state of Minnesota violating any of the provisions of this act shall be guilty of a misdemeanor, and upon conviction, shall be punished by a fine of not less than one hundred dollars, and not more than five hundred dollars for each offense, or by imprisonment in the county jail not more than sixty days, or both fine and imprisonment at the discretion of the court. It shall be the duty of the state railroad and warehouse commission, upon complaint properly filed with it alleging a violation of this act, to make a full investigation in relation thereto, and for such purpose it shall have the power to administer oaths, interrogate witnesses, take testimony and require the production of books and papers, and if such report shall show a violation of the provisions of this act the commission shall, through the attorney general, begin the prosecution of all parties against whom evidence of violation of the provisions of this act is found; but this act shall not be construed to prevent any other person from beginning prosecution for violation of the provisions hereof. ('07 c. 253 § 2) [3836]

4094. Employment of children—Under 14 years—No child under fourteen (14) years of age shall be employed, permitted or suffered to work at any time, in or in connection with any factory, mill or workshop, or in any mine; or in the construction of any building, or about any engineering work; it shall be unlawful for any person, firm or corporation, to employ or exhibit any child under fourteen (14) years of age in any business or service whatever, during any part of the term during which the public schools of the district in which the child resides are in session, except pursuant to consent of the mayor or president of the council of the village, for participation by children in theatrical exhibitions or concerts, as provided in section 10 hereof. ('07 c. 299, amended '12 c. 8 § 1; '13 c. 516 § 1) [3839]

1907 c. 299 § 13 repealed R. L. §§ 1804-1811 and all other inconsistent acts, etc. 1912 c. 8 § 13 repeals all inconsistent acts, etc.
90-431, 97+137; 107-74, 119+510.

4095. Over 14 and under 16 years—Employment certificate—It shall be unlawful for any person, firm or corporation to employ any child over 14 years of age, and under 16 years of age, in any business or service whatever, during which the public schools of the district in which the child resides are in session, unless the employer procures and keeps accessible to

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the truant officer of the town or city and to the commissioner of labor, assistant commissioner of labor, factory inspectors and assistants, an employment certificate as herein prescribed and a list of all such children employed. On termination of the employment of a child, such certificate shall be forthwith surrendered by the employer to the official who issued the same. ('07 c. 299, amended '12 c. 8 § 2) [3840]

90-431, 97+137; 94-478, 103+509; 104-138, 116+475.

R. L. § 1809 was not in contravention of fourteenth amendment of federal Constitution (104-138, 116+475).

Time during which schools are "in session" is construed as meaning school hours and not the school term. 164-21, 204+634.

4096. Certificate, by whom issued—An employment certificate shall be issued only by the superintendent of schools, or by some one authorized by him so to do, or, where there is no superintendent of schools, by the chairman of the school board or the chairman of the board of education, or by a person authorized by such chairman; provided, that no superintendent of schools, member of the school board or board of education or other person authorized, as aforesaid, shall have authority to issue such certificates for any child then in or about to enter his own employment or the employment of a firm or corporation of which he is a member, officer or employe. ('07 c. 299, amended '12 c. 8 § 3) [3841]

4097. Certificate, how issued—To whom—The person authorized to issue an employment certificate shall not issue such certificate until he has received, examined, approved and retained in his possession for the inspection of the public, the following papers duly executed: (1) The school record of such child, properly filled out and signed by the principal of the school which the child last attended, and if there is no principal, then by the teacher of such child in said school which shall be furnished on demand to a child entitled thereto. (2) A duly attested transcript of the births which shall be conclusive evidence of the birth of such child. (3) The affidavit of the parent or guardian or custodian of the child, showing the place and date of birth of such child, but such affidavit shall not be required unless the last mentioned transcript of the certificate of birth cannot be produced; which affidavit must be taken before the officer issuing the employment certificate, who is hereby authorized and required to administer such oath and shall not demand or receive a fee therefor. Such employment certificate shall not be issued until such child has personally appeared before and been examined by the officer issuing the same and until such officer shall, after making an examination, make and retain for inspection by the public, a statement that, in his opinion, the child is 14 years of age or upwards, and until such officer shall have received a certificate from a reputable practicing physician duly designated for such purpose by the school board affirming that the child has reached the normal development of a child of its age, and is in sound health and is physically able to perform the work which it intends to do. Every such employment certificate shall be signed in the presence of the officer issuing the same, by the child in whose name it is issued, and shall only be issued to children who have completed the studies taught in the common schools of the district in which they reside; or, a parochial or private school in which the curriculum is equal to the common schools of the district; provided, however, that no child shall be granted such certificate who is not able to read and write simple sentences in the English language. ('07 c. 299, amended '12 c. 8 § 4) [3842]

4098. Certificate shall state, what—Such employment certificate shall state the date and place of birth of the child, and describe the color of the hair and eyes and height and weight and any distinguishing facial marks of such child, and that the papers required by the preceding section have been duly examined, approved and retained for inspection by the public and that the child named in such certificate has appeared before the officer signing the certificate and been examined. ('12 c. 8 § 5) [3843]

4099. Monthly report to commissioner of labor—The superintendent of schools and chairmen of school boards and of the boards of education, shall transmit between the first and tenth day of each month to the office of the commissioner of labor of the state a list of the names of the children to whom certificates have been issued. The report shall give the date of issuing the certificate and the date of expiration; the age and sex of the child; the name of the employers and the nature of the occupation the child is permitted to engage in, and any one failing to transmit the list herein provided for, shall be guilty of a misdemeanor. ('07 c. 299, amended '12 c. 8 § 6) [3844]

4100. Children under 16—Hours of employment—Posted notice—No person under the age of 16 years shall be employed, or suffered or permitted to work at any gainful occupation more than 48 hours in any one week, nor more than 8 hours in any one day; or before the hour of 7 o'clock in the morning or after the hour of 7 o'clock in the evening. Every employer shall post in a conspicuous place in every room where such minors are employed, a printed notice stating the hours required of them each day of the week, the hours of commencing and stopping work, and the hours when the time or times allowed for dinner or for other meals begin and end. The printed form of such notice shall be furnished by the commissioner of labor of the state, and the employment of any minor for longer time in any day so stated, or between the hours of seven o'clock in the evening and seven o'clock in the morning, shall be deemed a violation of this section. ('07 c. 299, amended '12 c. 8 § 7) [3845]

90-431, 97+137.

4101. Penalties for violation—Whoever employs a child under 16 years of age, and whoever, having under his control a child under such age, permits such child to be employed in violation of sections 1, 2 or 7 of this act, shall, for such offense, be fined not less than \$25.00 nor more than \$50.00; and whoever continues to employ any child in violation of any of said sections of this act after being notified by truant officer of commissioner of labor of the state, shall for every day thereafter, that such employment continues, be fined not less than \$5.00 nor more than \$20.00 additional for each day that such employment continues. A failure to produce to a truant officer or any official of the labor department, any employment certificate or list required by this act shall be prima facie evidence of the illegal employment of any person whose employment certificate is not produced, or whose name is not so listed. Any corporation or employer retaining employment certificates in violation of section 2 of this act shall be fined \$10.00. Every person authorized to sign the certificate prescribed by section 5 of this act, who knowingly certifies any false statement therein shall be fined not more than \$50.00. ('07 c. 299, amended '12 c. 8 § 8) [3846]

90-431, 97+137.

4102. Visitorial powers of officials—Penalty—Officials of the labor department and the truant officers

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179m 46
228nw 332
228nw 342
234nw 682

may visit all factories, mills, workshops, mines, mercantile establishments and all other places where labor is employed and ascertain whether any minors are employed contrary to the provisions of this act, and they shall report any case of such illegal employment to the school superintendent or to the chairman of the school board or board of education and to the commissioner of labor of the state. Officials of the labor department and truant officers may require that the employment certificates and lists provided for in this act of minors employed, shall be produced for their inspection. Complaints for offenses under this act may be brought by any official of the state labor department, and any one who shall refuse to allow visitation in this section provided for, shall be guilty of a misdemeanor. ('07 c. 299, amended '12 c. 8 § 9) [3847]

90-431, 97+137.

4103. Children under 16 and 18—Prohibited employments—Penalty—No person shall employ or permit any child under the age of sixteen (16) years to serve or work as an employe of such person in any of the following occupations:

Sewing or adjusting belts used on machinery; oiling or assisting in oiling, wiping, or cleaning machinery; operating or assisting in operating circular or band saws, wood shapers, wood jointers, planers, sandpaper or wood polishing machinery, emery or polishing wheels used for polishing metal, wood turning or boring machinery, stamping machines in sheet metal and tin ware manufacture, stamping machines in washer and nut factories; operating corrugating rolls used in roofing factories; operating a steam boiler, steam machinery, or other steam generating apparatus; setting pins in bowling alleys; operating or assisting in operating dough grates or cracker machinery; operating wire or iron straightening machinery; operating or assisting in operating rolling mill machinery, punches or shears, washing, grinding or mixing mill; operating calendar rolls in rubber manufacturing; operating or assisting in operating laundry machinery; preparing or assisting in preparing any composition in which dangerous or poisonous acids are used; operating or assisting in operating any passenger or freight elevator; manufacturing of goods for immoral purposes; nor in any other employment or occupation dangerous to the life, limb, health or morals of such child.

No female under sixteen (16) years of age shall be employed where such employment requires such female to stand constantly during such employment.

No child under the age of eighteen (18) years shall be employed as a rope or wire walker, contortionist, or at flying rings, horizontal bars, trapeze or other aerial acts, pyramiding, weight lifting, balancing, or casting acts, or in any practice or exhibition dangerous or injurious to the life, limb, health or morals of such child.

Provided, that any child under sixteen (16) years of age may be employed or engaged in a theatrical exhibition only with the written permit of the mayor of the city or the president of the council of a village where such exhibition takes place. Such permit shall not be given for any child, local or transient, under ten (10) years of age, nor in any case unless written application be made to the officer empowered to give such permit. Such application and the permit based thereon shall specify the name of the child, its age, and the names and residence of its parents or guardian, the nature, kind, date when such performance will commence, duration and number of performances desired or permitted, together with the place and char-

acter of the exhibition. The mayor of the city or president of the council of the village, upon granting such permit, shall forthwith forward to the Industrial Commission of Minnesota a copy of such permit, and no such permit shall be granted unless there is a reasonable time for the copy of such permit to be received by the Industrial Commission and for investigation by said Commission prior to the date when such performance will commence. If it shall appear to such Industrial Commission that such permit is in violation of any existing law, or that the character of a performance is such as to be dangerous to the life or limb, or injurious to the health or morals of such child, then the Industrial Commission shall have power to suspend the operation of such permit. The applicant shall be promptly notified of any suspension or revocation of such permit.

Provided, further, that this section shall not apply to any child appearing as a singer, dancer, or musician in any church, school, or academy, or in any other place under the auspices of any church, school or academy, and any child under ten years of age may appear as singer, dancer, musician or actor in a theatrical exhibition with the written permit only of the Industrial Commission, after application for such appearance has been made to said Commission, and such application and the permit based thereon shall specify the name of the child, its age, and the names and residence of its parents or guardian, the nature, kind and date of such appearance, the duration and number of appearances desired or permitted, together with the place and character of such appearances.

Application for such permit shall be made sufficiently in time prior to the date when such appearance will commence, to permit the Industrial Commission to investigate such application.

Any person violating any of the provisions of this section shall be guilty of a misdemeanor. ('07, c. 299; amended '12, c. 8, § 10; '13, c. 120; '13, c. 516, § 2; '27, c. 388, § 1 [3848])

Employer used elevator without guards as provided by law, and the employee, a minor over 16 years old, was injured thereon. Held, that the language, "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. 158-495, 198+290.

An employment is "dangerous" whenever there is reasonable cause to anticipate injury to the person engaged in it, whether the risk comes from the inherent character of the work, or whether it comes from the manner in which the work is done. 164-21, 204+634.

A complaint construed, and held not to state a cause of action arising out of an unlawful employment within the section. 164-21, 204+634.

103-615, 114+1131.
133-112, 157+996; 137-24, 162+680. The employment being "legally permitted" determines the character of liability. 142-141, 17+303.

Statute is primarily directed against the employer 145-171, 176+482.

4104. Employment of boys and girls as messengers—No boy under the age of 18 years shall be employed or permitted to work as a messenger for a telegraph or messenger company in the distribution, transmission or delivery of goods or messages before 5:00 o'clock in the morning or after 9:00 o'clock in the evening of any day; and no girl under the age of 21 years shall be thus employed at any time. Any person employing any child in violation of the provisions of this section shall be guilty of a misdemeanor. ('07 c. 299, amended '12 c. 8 § 11) [3849]

4105. Physician's certificate—Failure to produce—Penalty—In case any child appears to be unable to perform the labor at which he or she is employed, the officials of the labor department or truant officers, shall require the employer of such child to procure a certifi-

cate from a reputable practicing physician duly designated for such purpose by the school board, affirming the physical fitness of the child for such work, and a child as to whom such certificate cannot be obtained shall not be employed. Any person refusing to produce the certificate herein required upon demand, or who shall employ a child when a certificate has been procured stating that such child is physically unable to work, shall be guilty of a misdemeanor. ('07 c. 299, amended '12 c. 8 § 12) [3850]

90-431, 97+137, 101.

33 4106 63
4106. Prohibited employments—Exceptions—No boy under sixteen years of age and no girl under eighteen years of age shall engage in or carry on or be employed or permitted or suffered to be employed in any city of the first, second or third class in the occupation of peddling, bootblacking or distributing or selling newspapers, magazines, periodicals or circulars upon streets or in public places; provided, however, that any boy between fourteen and sixteen years of age, upon application to the school authorities as in the case of application for an employment certificate, and upon compliance with all the requirements for the issuance of an employment certificate, shall receive a permit and badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations between the hours of five o'clock A. M., and eight o'clock P. M., of each day, but at no other time, except as provided in section 3 hereof; and, providing further, that any boy between twelve and sixteen years of age, upon application as provided in the preceding section and upon due proof of age and physical fitness in the manner provided by law for the issuance of employment certificates, may receive a permit and a badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations during those hours between five o'clock A. M. and eight o'clock P. M., when the public schools of the city where such boy resides are not in session; but at no other time except as provided in section 3 hereof. ('21 c. 318 § 1)

4107. Sale of extras—Any boy who has received a permit and a badge may sell after eight o'clock in the evening extra editions of daily newspapers; provided, however, that nothing herein contained shall be construed to permit the violation of a curfew ordinance of any city. ('21 c. 318 § 2)

4108. Issue and use of badges—The sum of twenty-five cents (25c) shall be deposited with the city treasurer for the use of each badge, which sum shall be refunded upon its return. Badges shall not be transferable and shall be good only in the city in which they are issued. They shall be displayed by the recipient at all times while engaged in any of the occupations hereby permitted, in such manner as may be prescribed by the officer issuing the same. No boy to whom a permit and a badge have been issued as provided herein shall permit the same to be carried, worn or used by another. ('21 c. 318 § 3)

4109. Violation of act delinquency—Enforcement—Any child who persistently violates any of the provisions of this act shall be deemed delinquent. The school attendance officers of the cities to which this act applies are hereby charged with its enforcement. ('21 c. 318 § 4)

4110. Recall and surrender of badge—Any permit or badge issued as provided herein may be recalled at the discretion of the officer issuing the same; and upon an adjudication of delinquency against any boy to

whom a permit and badge have been issued pursuant to the provisions of this act, the court may, in addition to such other correction as may be deemed advisable, require him to surrender his permit and badge for a period to be determined by the court. ('21 c. 318 § 5)

4111. Act not applicable to carriers—Nothing in this act shall be construed to apply to the regularly employed newspaper carriers or to persons distributing newspapers, magazines or periodicals to regular subscribers at their residences or established places of business. ('21 c. 318 § 6)

4112. One day of rest in certain employments—No person shall be employed in, or about, any mechanical or mercantile establishment, factory, foundry, laundry, power plant or stationary boiler or engine room, in this state, more than six days in any one week; provided, however, that this act shall not apply to employes of any common carrier by steam or gasoline or electric railway, nor employes of hospitals, clinics, sanatoriums or dispensaries, who are directly employed in the care of the sick nor to the employes of any telegraph or telephone company or employes engaged in conducting the telegraph or telephone business, nor to employes of any undertaker, undertaking establishment, cemetery association or company, nor to employes of newspaper plants, nor to employes in any canning factory or establishment, nor to employes engaged in the burning of kilns in potteries, sewer pipes or brick and tile factories where continuous fire is necessary, nor to employes in any creamery or cheese factory, in any town, village or city of the third or fourth class, nor employes engaged in the burning of lime or hydrating of lime, nor employes engaged in the manufacture of salt or refining of salt, nor to places of public amusements, nor to automobile garages, repair shops and oil filling stations, nor to licensed pharmacists or assistant pharmacists, nor to persons engaged in caring for live stock, nor to any employe working in or in connection with any flour mill or the operation thereof, or in or in connection with the milling industry or carrying on the same, nor heating plants in any building or edifice, when only one person is employed therein, nor to works of necessity or emergency whether caused by fire, flood, or danger to life and property, or otherwise, nor to those engaged in military or naval service. Whenever the Industrial Commission shall determine, after investigation upon application of an employer that an extraordinary rush in the business, industry or establishment of such employer requires the employes thereof or therein during any season or period of any calendar year to work more than six days a week in order to meet the demands of such business, industry or establishment, or its patrons, an emergency within the meaning of such term as used in this act, shall be deemed to exist therein; provided, however, that there shall not be more than one such period or season and the same shall not continue for more than three consecutive months in any one calendar year; and, provided, that no employe shall in any such case be required to work more than six days within any one week without his consent; and, provided further, that it shall be the duty of the Industrial Commission, upon application of any employer in such form as the Commission shall prescribe, as herein provided, to determine whether or not any such extraordinary rush of business exists, and make its order accordingly and file and keep the same as a part of its records. ('23 c. 298 § 1)

Invalid. 161-376, 201+610.

4113. Employer to arrange for enforcement of act—Every employer subject to the provisions of this act shall arrange the work of his, her or its employes in such a manner as to carry out the provisions hereof, and shall post in the place of employment, a schedule, showing the working period of each employe for each week, designating clearly the day of the week which shall be rest-day for each employe. The employer shall file with the Industrial Commission of this state a copy of such schedule, and of every change that may be made therein. ('23 c. 298 § 2)

Invalid. 161-376, 201+610.

4114. Violations—Penalties—Any employer who shall require, permit or suffer, except as hereinbefore provided, any person to work in any of the places or employments mentioned in section 1 of this act and not excluded from the provisions thereof, more than the number of days provided for therein, during any week, or who shall fail, neglect or refuse to arrange the work of the persons in his, her or its employ so that they shall not work more than the number of days provided for herein during any one week, or who shall permit or suffer any superintendent or other agent of any such employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each such offense, by a fine of not less than twenty-five dollars or more than one hundred dollars. ('23 c. 298 § 3)

Invalid. 161-376, 201+610.

4115. Industrial Commission to enforce act—It shall be the duty of the Industrial Commission of this state to aid to the fullest possible extent in the enforcement of the provisions of this act, and in the prosecution of all violations thereof. ('23 c. 298 § 4)

Invalid. 161-376, 201+610.

4116. Hours of female employes limited—No female shall be employed at any business or service whatever more than nine and a half hours in any one day and fifty-four hours in any one week; provided, that this act shall not apply to women employed as domestics in the home, or to persons engaged in the care of the sick or injured, or to cases of emergency in which the safety, health, morals or welfare of the public may otherwise be affected, or to cases in which night employes may be at the place of employment for no more than twelve hours and shall have opportunity for at least four hours of sleep; or to telephone operators in municipalities of less than 1,500 inhabitants. ('23 c. 422 § 1)

4117. Employers not to permit violations of act—It shall be unlawful for any employer of labor to employ, cause to be employed or permit any female employe to labor any number of hours whatever, with knowledge that such female has heretofore been employed within the same date and day of twenty-four hours in any establishment and by any previous employer, for a period of time that will, combined with the period of employment by a previous employer exceed nine and a half hours; provided, that this shall not prevent the employment of any female in more than one establishment where the total number of hours worked by said employe does not exceed nine and a half hours in any one day of twenty-four hours. If any female shall be employed in more than one such place, the total number of hours of such employment shall not exceed nine and a half hours during any one day or twenty-four hours or fifty-four hours in one week. ('23 c. 422 § 2)

4118. Penalties for violation—Any employer or any agent acting for an employer who shall require or permit or suffer any female to work at any business or service whatever more than the number of hours provided for in section 1 of this act, more than nine and a half hours in any one day or more than fifty-four hours in any one week; or who shall fail, neglect or refuse so to arrange the work of females in his employ that they shall not work more than the number of hours provided for in this act during any one day or any one week, or who shall knowingly permit or suffer any overseer, superintendent, foreman or forelady, or other agents of any employer to violate any of the provisions of this act, shall be guilty of a misdemeanor, and, upon conviction thereof, shall, at the discretion of the court, be fined for each offense in the sum of not less than twenty-five dollars or more than one hundred dollars, and whenever any person shall have been notified by the Industrial Commission of Minnesota, or by the service of a summons in a prosecution that he is violating such provision, he shall be punished by like penalty in addition for each and every day that such violation shall have continued after such notification. ('23 c. 422 § 3)

4119. One hour for meals—Exceptions—In every establishment provided for in section 1 of this act at least sixty minutes shall be allowed for regular meals unless the Industrial Commission of Minnesota shall permit a shorter time.

Such permit must be in writing and conspicuously posted in the workroom of the establishment where women are employed and may be revoked at any time. ('23 c. 422 § 4)

Section 1 is § 4116, herein.

4120. Abstract of act to be posted—Every employer to whom this act shall apply shall keep posted in a conspicuous place in the workroom where such females shall be employed or permitted to work, a printed abstract of the provisions of this act. ('23 c. 422 § 5)

4121. Schedule of hours to be posted—A printed schedule stating the number of hours per day for each day of the week required of such persons and the time when such work shall begin and end, shall be kept posted in a conspicuous place in each room where females are employed, but such persons may begin their work after the time of beginning and stop before the time for ending such work mentioned in this notice, but they shall not otherwise be employed or permitted or suffered to work in any establishment except as stated herein. ('23 c. 422 § 6)

4122. Industrial Commission to provide schedules—The Industrial Commission of Minnesota shall supply the abstract of the provisions of this act and the form for the schedules of hours of labor required for this act to all employers to whom this act shall apply. ('23 c. 422 § 7)

4123. Employers to keep time books—Every employer shall keep a time book or record for every female employe in his establishment, stating the number of hours worked by her each day and the total hours of each week, and the hours of beginning and stopping such work. Such time book or record shall be open to the inspection of the members of the Industrial Commission of Minnesota. The employer who wilfully fails to keep such a time book or record as required by this section, or makes any false statements therein, or refuses to exhibit such time book or record, or makes false statements to the members of the Industrial Commission of Minnesota in reply to any questions put in carrying out the provisions of this section, shall be guilty of a misdemeanor, and,

upon conviction thereof, shall, at the discretion of the court, be fined for each offense the sum of not less than ten dollars or more than twenty-five dollars, or by imprisonment for not exceeding ten days. ('23 c. 422 § 8)

4124. Industrial Commission to enforce act—The Industrial Commission of Minnesota shall be charged with the duty of enforcing the provisions of this act and prosecuting all violations thereof. ('23 c. 422 § 9)

4125. Each section independent—Each section of this act and every part thereof is hereby declared to be an independent section or part of a section, and if any section, sub-section, sentence, clause or phrase of this act shall for any reason be held unconstitutional, the validity of the remaining phrases, clauses, sentences, sub-sections and sections of this act shall not be affected thereby. ('23 c. 422 § 10)

4126. Inconsistent act repealed—All acts and parts of acts in conflict with the provisions of this act are hereby repealed. ('23 c. 422 § 11)

4126-1. Hours of employment of females in seasonal occupations—The provisions of Chapter 499, Laws 1909, of Chapter 581, Laws 1913, and of Chapter 422, Laws 1923, relating to hours of employment of female employes, shall not apply to employes engaged in the seasonal occupation of preserving perishable fruits, grain or vegetables, where such employment does not continue over a longer period than 75 days in any one year. ('27, c. 349)

Explanatory note—Laws 1909, c. 499, was an act entitled "An act prescribing hours of labor and time for meals for women and children in mercantile establishments; regulating the ventilation and sanitation of all manufacturing establishments and providing for the enforcement thereof." Section 6 thereof was amended by Laws 1911, c. 184. This act was omitted from Gen. St. 1913, on the theory that it was superseded by Laws 1913, c. 581, which was included in Gen. St. 1913, as §§ 3851 to 3856. Laws 1913, c. 581, was omitted from Gen. St. 1923 as having been repealed by Laws 1923, c. 422. Sections 3, 4 and 5, of Laws 1913, c. 581, were expressly repealed by Laws 1919, c. 491, § 20. For Laws 1923, c. 422, see §§ 4116 to 4126, herein.

WAGES

4127. Penalty for failure to pay wages promptly—Whenever any person, firm, company, association or corporation employing labor within this state discharges a servant or employe from his employment, the wages actually earned and unpaid at the time of such discharge shall become immediately due and payable upon demand of such employe, at the usual place of payment, and if not paid within twenty-four hours after such demand, whether such employment was by the day, hour, week, month or piece, such discharged employe may charge and collect wages at the rate agreed upon in the contract of employment, for such period, not exceeding fifteen days (after the expiration of said twenty-four hours) as the employer is in default, until full payment or other settlement, satisfactory to said discharged employe, is made. ('19 c. 175 § 1)

Liability of surety on highway contractor's bond. 160-453, 200+ 839.

4128. Notice to be given—Settlement of disputes—Whenever any such employe (not having a contract for a definite period of service), quits or resigns his employment, the wages earned and unpaid at the time of such quitting or resignation shall become due and payable within five days thereafter, at the usual place of payment, and any such employer failing or refusing to pay such wages, after they so become due, upon the demand of such employe at such place of payment,

shall be liable to such employe from the date of such demand for an additional sum equal to the wages provided in said contract of employment, for every day (not, however, exceeding fifteen days in all), until such payment or other settlement satisfactory to said employe, is made; provided, that if any employe having such a contract as is above defined, gives not less than five days' written notice to his employer of his intention to quit such employment, the wages of the employe giving such notice shall become due at the usual place of payment twenty-four hours after he so quits or resigns, and payment thereof may be demanded accordingly, and the penalty herein provided shall apply in such case from the date of such demand; provided further, that if the employer disputes the amount of wages claimed by such employe under the provisions of this, or the preceding section, and the employer in such case makes a legal tender of the amount which he in good faith claims to be due, he shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having jurisdiction, such employe recovers a greater sum than the amount so tendered with such interest thereon; and if, in such suit, said employe fails to recover a greater sum than that so tendered, with interest as aforesaid, he shall pay the cost of such suit; otherwise the cost thereof shall be paid by said employer; provided further, that in cases where such discharge or quitting employe was, during his employment intrusted with the collection, disbursement or handling of money or property, the employer shall have ten secular days after the termination of the employment, to audit and adjust the accounts of such employe before his or her wages shall become due and payable, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of such period allowed for such audit and adjustment; and if, upon such audit and adjustment of said accounts of such employe, it is found that any money or property intrusted to him by his employer has not been properly accounted for or paid over to the employer, as provided by the terms of the contract of employment, such employe shall not be entitled to the benefit of this act, but the claim for earned and unpaid wages of such employe, if any, shall be disposed of as provided by existing law. ('19 c. 175 § 2)

4129. When employe shall not be entitled to benefits—No such servant or employe who secretes or absents himself to avoid payment to him or refuses to receive the same when fully tendered, shall be entitled to any benefit under this act for such time as he so avoids payment. Provided, when any number of employes enter upon a strike, the wages due such striking employes at the time of entering upon such strike shall not become due until the next regular pay day after the commencement of such strike. ('19 c. 175 § 3)

4130. Construction—This act shall not be construed to apply to any person employed exclusively as a farm laborer, nor to any employer or an individual, co-partnership or corporation that is bankrupt, or where a receiver or trustee is acting under the direction of the court. Payment or tender by check drawn on a bank situated in the county where a laborer is employed shall be a sufficient payment or tender to comply with the provisions of this act. ('19 c. 175 § 4)

4131. Costs to be paid by defendant—In any action by any such employe as is described in this act, for the recovery of unpaid wages after the time when such wages shall have become due, as herein provided,

4127-4128
33 - 173
33 - 223
33 - 249
33 - 250

there shall be allowed to the plaintiff, and included in any judgment rendered in his favor, in addition to his disbursement allowed by law, if the judgment be recovered in a justice court, five dollars costs, and a like sum if the judgment be recovered in municipal court and such plaintiff shall be allowed double statutory costs in any such action in any court in which statutory costs are now allowed by law in ordinary actions. ('19 c. 175 § 5)

4132. Inconsistent acts repealed—All acts, or parts of acts, inconsistent with this act, are hereby repealed. ('19 c. 175 § 6)

4133. Wages of minors—To whom paid—Any parent or guardian claiming the wages of a minor in service shall so notify his employer, and, if he fail so to do, payment to the minor of wages so earned shall be valid. (1812) [3857]

4134. Payment of salary or wages earned by non-negotiable instruments unlawful and penalty for same—It shall be unlawful for any person, firm or corporation other than public service corporations to issue to any employee in lieu of or in payment of any salary or wages earned by such employee, a non-negotiable time check or order. Any person, firm or corporation so issuing a non-negotiable instrument in lieu of or in payment of such salary or wages earned, shall be guilty of a misdemeanor. ('17 c. 348 § 1)

4135. When assignment, sale or transfer of wage or salary is not to be effective—No assignment, sale or transfer, however made or attempted to be made, of any wages or salary, to be earned, shall give any right of action, either at law or in equity, to the assignee or transferee of such wages or salary, nor shall any action lie for the recovery of such wages or salary, or any part thereof, by any other person than the person to whom such wages or salary are to become due, unless a written notice, together with a true and complete copy of the instrument assigning or transferring such wages or salary, shall have been given within three days after the making of such instrument to the person, firm or corporation from whom such wages or salary are accruing, or may accrue. ('05 c. 309 § 1, amended '17 c. 321 § 1) [3858]

Certain assignments validated and legalized. '17 c. 454 § 1.
125-311, 146+359; 144-141, 174+827.

4136. Unearned wages—Consent of employer—Collection fee—Penalty—No assignment, sale or transfer, however made or attempted, of any unearned wages or salary shall be in any manner valid or effectual for the transfer of any salary or wages to be earned or accruing after the making of such assignment, sale or transfer, unless the person, firm or corporation from whom such wages or salary are to accrue shall consent thereto in writing. Any employer or agent of such employer accepting or charging any fee or commission for collecting the amount due on any such assignment, sale or transfer, shall be deemed guilty of a misdemeanor. ('05 c. 309 § 2) [3859]

4137. Assignment void, when—Every assignment, sale or transfer, however made or attempted, of wages or salary to be earned or to become due, in whole or in part, more than sixty (60) days from and after the day of the making of such transfer, sale or assignment, shall be absolutely void. ('05 c. 309 § 3) [3860]

4138. Assignment of unearned wages as security, etc.—No assignment of, or order for, wages to be earned in the future to secure a loan of less than two hundred dollars, shall be valid against an employer of the person making said assignment or order until said assignment or order is accepted in writing by the em-

ployer, and said assignment or order and the acceptance of the same have been filed and recorded with the clerk of the city or town where the party making said assignment or order resides, if a resident of this state, or in which he is employed if not such resident. No such assignment of, or order for, wages to be earned in the future shall be valid when made by a married man, unless the written consent of his wife to the making of such assignment or order is attached thereto. ('11 c. 308 § 1) [3861]

4139. Semi-monthly payments—All public service corporations doing business within this state are required to pay their employees at least semi-monthly, the wages earned by them to within fifteen (15) days of the date of such payment, unless prevented by inevitable casualty.

Provided, however, that whenever an employee shall be discharged, his wages shall be paid to him at the time of his discharge or whenever he shall demand the same thereafter. ('15 c. 29 § 1, amended '15 c. 37 § 1)

4140. Penalty for failure to make payment—Whenever any public service corporation shall for five days neglect or refuse to pay its employees as prescribed by section 1 of this act, the wages due them may be recovered by action without further demand, and there shall be allowed to the plaintiff, and included in his judgment, in addition to his disbursements allowed by law, five dollars costs if the judgment be recovered in a justice court, and a like sum if the judgment be recovered in a municipal court, where no statutory costs are now allowed in such municipal court in such action, and double costs in all other courts or on appeal. ('15 c. 29 § 2, amended '15 c. 37 § 2)

DANGEROUS MACHINERY

4141. Dangerous machinery, how guarded—Defective machines, etc.—Powers of commissioner—The in-taking side of all engaging-toothed or other gears, rolls, drums and slides of every description on any type of machine; the spaces between fixed and moving parts of or at any machine, or between the latter or any part of it and structures near it, leaving insufficient clearance for any person employed thereon or near it; all pulleys and clutches; all belts, cables, bands and driving ropes or chains; all fly wheels, shafting, spindles, levers, connecting rods and links, couplings, or projections thereon, or upon reciprocating or moving parts of machines; all counter weights and balance gears and their suspension; all dangerous parts of machinery; all systems of electrical wiring and transmissions, all dynamos and other electrical apparatus and appliances of every description; and all prime movers in any factory, school, mercantile establishment, mill, workshop, engineering operation, or other places where persons are employed, or otherwise engaged, shall be fenced, boxed or otherwise protected to the fullest degree practicable; provided, however, that the above shall apply only to all machinery and apparatus above described when located less than six (6) feet above the working floor. All machinery, apparatus, furniture, fixtures, ways, structures, and other equipment shall be so placed or guarded in relation to one another as to be safe for all persons thereabouts employed, and all points, which are rendered unsafe by the relative positions of such things shall be securely guarded. Every dangerous place of every description in or near to which any employe is obliged to pass or to be employed, shall be securely fenced, enclosed, or otherwise protected. No grindstone, tool, or appliance, or machine of any descrip-

4141
234nw 682
See 4100

tion shall be used when the same is known to be cracked or otherwise defective. If a machine or any part thereof is in a dangerous condition or is not properly guarded, the use thereof may be prohibited by the commissioner of labor or any factory inspector and a notice to that effect shall be attached thereto. Such unsafe or dangerous machinery shall not be used until made safe. ('13 c. 316 § 1) [3862]

Object of statute to protect workmen, whether operating the machinery or working about it. To be construed so as to carry out this object. Immaterial that owner could not reasonably have anticipated injury in the precise way it occurred (70-161, 72+1062; 83-25, 85+826; 93-242, 101+300). Does not change common law rule as to contributory negligence or assumption of risk (67-78, 69+630; 82-407, 85+157; 89-132, 94+436; 91-509, 98+645; 93-242, 101+300; 110-40, 124+450; 112-360, 128+297; 126 Fed. 524, 61 C. C. A. 506; 182 Fed. 42, 104 C. C. A. 482). What constitutes contributory negligence or assumption of risk (110-40, 124+450; 118-357, 136+1039). Expert workmen neglecting to use safety devices furnished by employer assume the risks. Guards must not only be furnished; they must be maintained (93-242, 101+300; 107-17, 119+483). Duty to guard cannot be shifted by leasing premises (70-161, 72+1062). Said to be declaratory of common law (91-317, 97+977. But see 109-30, 122+465). Limited to protection of employees (78-3, 80+693; 117-348, 135+1129. Liability in case of children (90-431, 97+137; 95-356, 104+291; 107-74, 119+510).

Mere fact that machinery had not been manufactured with guard, or that it had not been customary to use guards is no excuse (105-80, 117+238. See, also, 101-325, 112+262).

R. L. §§ 1813-1815, providing for protection of employees, while it does not change the common law as to contributory negligence or assumption of risk, does so change it that, if practicable to guard dangerous machinery, it must be guarded, and failure is negligence per se (109-30, 123+807; 118-357, 136+1039. See, also, 105-80, 117+238; 107-567, 119+481).

Location of machinery, sufficiency of guards, and necessity or liability of operator coming in contact with it, are to be submitted to jury (109-481, 124+235).

Bag-turning machine within statute (107-214, 120+359). Held to apply for protection of coal shoveler at elevator, who was also in charge of engine. Walls of engine house, twelve feet square, did not constitute compliance (107-26, 120+360).

Whether shaft to wood-sawing machine should be guarded in other manner than as protected by feeding trough held for jury (108-51, 121+227).

Pumphouse within section (112-360, 128+297).

Cited (68-305, 71+276; 70-538, 73+510; 80-393, 83+389; 85-13, 88+261; 86-328, 90+573; 89-354, 94+1079; 101-58, 111+841; 104-354, 116-348).

Charitable institutions (122-10, 141+837; 124-19, 144+431; 124-55, 144+434, 190+258).

Risk assumed (125-29, 145+628).

Warning (129-432, 152+840).

Owner supervising (190+258).

Employer used elevator without guards as provided by law, and the employee, a minor over 16 years old, was injured thereon. Held, that the language "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. 158-495, 198+290.

4142. Belt shifters, loose pulleys, etc.—Every owner of a factory, mill or workshop where machinery is in use shall furnish or cause to be furnished, whenever practicable, belt shifters or other safe mechanical contrivance for the purpose of throwing belts on or off pulleys; and, whenever practicable, machinery shall be provided with loose pulleys. Whenever in the opinion of the labor commissioner it becomes necessary, exhaust fans of sufficient power or other devices shall be provided for carrying off dust from emery wheels, grindstones and other dust-creating machinery. ('13 c. 316 § 2) [3863]

101-58, 111+841.

Applied to owners of grain elevators (111-275, 126+903).

That it is inconvenient, involves expense, and necessitates additional space to provide belt shifters or loose pulleys, does not conclusively show that it is not practicable (114-278, 130+1106).

4143. Compulsory communication between work-rooms—Where the machinery in any room is propelled

by power transmitted directly from another room or from another building and the machinery in each workroom cannot be disconnected and stopped in such workroom, communication shall be provided between each workroom in which machinery is placed and the room in which the engineer or other person having control of the power-generating apparatus is stationed by means of speaking tubes, electric bells, telephones or appliances that may control the motive power. ('13 c. 316 § 3, amended '19 c. 107 § 1) [3864]

4144. Prime mover—Distance from floor—No part of the motors, gearing, belts, pulleys, shafts, or clutches or other apparatus conveying the power of a prime mover to machines shall be less than six feet from the floor unless it is securely guarded. ('13 c. 316 § 4) [3865]

4145. Manufacture and sale of unguarded machines prohibited—Whenever practicable the points of danger in any machine or mechanism shall be securely guarded by the maker, and the manufacture or sale of any machine or mechanism not so guarded is hereby prohibited. ('13 c. 316 § 5) [3866]

133-29, 157+899.

4146. Rails and foot guards—Stairways—All vats, pans or other receptacles containing molten metal or hot or corrosive liquids, or otherwise dangerous liquids, below the floor level; all pits or other openings in the floor or surface of the ground; all gangways and inclined footways, or other places from which a person might fall, shall be provided with adequate hand rails and foot guards or other equally effective protection, and in establishments where women are employed or where it is deemed necessary by the labor commissioner, stairways shall be built solid and without openings between the treads. ('13 c. 316 § 6) [3867]

4147. Certain places, etc., to be lighted—All stairways and inclined footways, and all points where there is a break or change in the floor level or in the character of the floor surface, where persons may have to walk or pass, and all dangerous places, all prime movers and all moving parts of machinery where, on or about which persons work or pass, or may have to work or pass in emergencies, shall be kept properly and sufficiently lighted during working hours. ('13 c. 316 § 7) [3868]

4148. Removing safety appliances—No employes in any factory, mill, workshop, or upon any engineering work, nor any other person, by permission or otherwise, shall remove, displace or destroy any guard for dangerous machinery, or other safety device, which the employer shall have provided under the requirements of this chapter, or any other law, save under rules established by the employer therefor. Safety appliances removed for the purpose of making repairs, adjustments, or for other purposes permitted or required by the employer shall be immediately replaced when such purpose is accomplished. ('13 c. 316 § 8) [3869]

4149. Children under 16 not to be employed in certain occupations—No children, under the age of sixteen (16) years, shall be employed at sewing belts, or to assist in sewing belts in any capacity whatever; nor shall any such children adjust any belt to any machinery; they shall not oil, or assist in oiling, wiping or cleaning machinery; they shall not operate or assist in operating circular or band saws, wood shapers, wood-jointers, planers, and paper or wood polishing machinery, emery or polishing wheels used for polishing metal, wood-turning or boring machinery, stamp-

4145
251nw 534
4101

4147
171m 408
214nw 269
See 4152

ing machines in sheet metal and tinware manufacturing, stamping machines in washer and nut factories; nor as pin boys in bowling alleys; they shall not operate or assist in operating dough brakes or cracker machinery of any description; wire or iron straightening machines, nor shall they operate or assist in operating rolling mill machines, punches or shears, washing, grinding or mixing mill or calendar rolls in rubber manufacturing; nor shall they operate or assist in operating laundry machinery; nor shall they be employed in any capacity in preparing any composition in which dangerous or poisonous acids are used; and they shall not be employed in any capacity in the manufacture of paints, colors or white lead; nor shall they be employed in any capacity whatever in the manufacture of goods for immoral purposes, or any other employment dangerous to their lives or limbs or their health or morals. No woman shall be required or permitted to oil or clean moving machinery. ('13 c. 316 § 9) [3870]

133-303, 158+431; 137-24, 162+680; 142-141, 171+303.

4150. Same—No person shall employ or permit any child under the age of sixteen years to have the care, management or operation of any elevator, nor shall they be employed in operating any steam boiler or other steam generating apparatus. ('13 c. 316 § 10) [3871]

Student elevator operator 133-112, 157+995.

Employer used elevator without guards as provided by law, and the employee, a minor over 16 years old, was injured thereon. Held, that the language, "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. 158-495, 198+290.

4151. Crowding of floor space prohibited—The floor space in any factory, mill, workshop or mercantile establishment shall not be crowded with machinery in a manner dangerous to employees, or in excess of the sustaining power of floors or walls, nor be overcrowded with materials or products so as to be a menace to employees or in excess of the sustaining power of the floor and walls. ('13 c. 316 § 11) [3872]

4152. Protection of hoistways, elevators, etc.—Every hoisting apparatus used in the construction of any building; every hoistway, hatchway, elevator well, and wheel hole in any factory, mill, workshop, storehouse, wareroom, or store, shall be securely protected on each floor by a substantial barrier at least three feet and six inches high, which shall be kept closed except when necessarily opened for use. Every elevator car used for either freight or passenger shall be provided with some suitable mechanical device by which it can be securely held in the event of accident to the rope or hoisting machinery. ('13 c. 316 § 12) [3873]

70-161, 72+1062; 78-3, 80+693.

Failure to guard as negligence per se (112-138, 127+482).

Duty of lessee and liability of lessor (103-189, 114+745).

G. S. 1894 § 2250 did not abrogate common law as to contributory negligence (99-7, 108+811).

Evidence of contributory negligence and assumption of risks held to preclude recovery (113-394, 129+593).

Includes hoists erected on outside and adjacent to building in process of erection (116-295, 133+861).

Openings in floor of barn in process of construction, to be used for putting down hay, are not within statute (114-165, 130+943).

See also 121-388, 141+488; 125-29, 145+628; 129-79, 151+542, 190+258; 140-371, 168+131.

4153. Scaffolds, hoists, etc.—Duty of inspector—Overhead walks, etc.—Whenever practicable, all scaffolds, hoists, cranes, stays, supports, or other mechanical contrivances, erected or constructed by any person,

firm or corporation, in this state, for the use in erection, repairing, alteration, removal, cleaning or painting of any house, building, bridge, viaduct, or other structure shall be erected and constructed in a safe, suitable and proper manner, and shall be so erected and constructed, placed and operated, as to give proper and adequate protection to the life and limb of any person or persons employed or engaged thereon, and to any persons or employees passing under or in proximity to the same. Whenever a state factory inspector shall find that the scaffolding or the slings, hangers, blocks, pulleys, stays, braces, irons, or ropes of any swinging or stationary scaffolding, platform, or other similar device, used in the construction, alteration, repairing, removing, cleaning, or painting of buildings, bridges or viaducts within this state, or in factories, work shops, mills, or mercantile establishments, are unsafe or liable to prove dangerous to the life or limb of any person, he shall at once notify the person responsible for its creation or maintenance, either personally or by mail, and a notice of danger shall also be affixed to said scaffold, platform or other such device, which shall be made safe before further use. Wherever practicable, scaffolding, staging, runways, oiling platforms and all other overhead walks or standing places among or suspended from an overhead support, or rising from the ground floor and more than five (5) feet from the ground or floor, shall have a safety rail properly bolted or otherwise fastened, secured and braced, rising at least thirty-four (34) inches above the floor of said scaffolding, staging, platform or other overhead walk or standing place, and extending along the entire length of the outside and ends thereof, and properly attached thereto, unless equal protection is afforded in another manner, and such scaffolding or staging shall be so fastened as to prevent the same from swaying from the building or structure to which it is attached or toward which an employe must work. Persons employed upon swinging scaffolds shall use a life line securely fastened to their persons and to some secure support other than said swinging scaffold. ('13 c. 316 § 13) [3874]

Liability of the master as to scaffold construction prior to present statute (128-71, 149+954; 131-476, 155+768; 190+258).

The evidence warranted the jury in finding that a scaffold provided by defendant for the use of its employees while remodeling a car in its shops was not safe. 157-171, 195+893.

The evidence would warrant an inference by the jury, that plaintiff was on the scaffold when he fell, and that its unsafe condition was a proximate cause of his injury. Plaintiff had the burden of establishing causal connection between the negligence alleged and the injury suffered, but was not required to establish it by direct evidence. 157-171, 195+893.

Whether plaintiff assumed the risk incident to the use of the scaffold was a question for the determination of the jury. He had the right to act on the assumption that defendant would see that the scaffold was kept safe for use to the extent of discovering and remedying an unsafe condition, if it arose after the scaffold was constructed, and would not be oblivious to those who used it. 157-171, 195+893.

4154. Substantial construction—Repair—All floors, standing places, stairways, inclined footways and ladders and all hand rails or similar protection shall be of substantial construction and at all times shall be kept in good order and repair and so as to be firm and safe for the uses to which they are put. ('13 c. 316 § 14) [3875]

4155. Buildings of 3 stories in construction—Planking iron or steel beams—On all buildings three (3) stories or more in height where floor beams are of iron or steel, the contractor for the iron or steel work of such buildings in the course of construction, or the

owners of such buildings, shall plank over the entire tier of iron or steel beams on the floor next below the one on which such structural iron or steel is being erected, except such space as may be reasonably required for the proper construction of such iron or steel work, and for the raising and lowering of materials to be used in the construction of such buildings, or such spaces as may be designated by the plans and specifications for stairways, elevator-shafts and other openings. ('13 c. 316 § 15) [3876]

4156. Warning notices—The employer shall post such warning notices and instructions and cause dangerous places to be indicated in such manner as the labor commissioner shall require. ('13 c. 316 § 16) [3877]

4157. Fire escapes — Doors — Hand rails — Every building in which laborers are employed shall be provided with sufficient means of escape in case of fire, by more than one way of egress, each of which shall be at all times free from obstruction and ready for immediate use, and every such egress shall be provided with a sign having on it the word "exit" in letters not less than five inches in height and so as plainly to indicate to persons within the building the location of such egresses. Every door leading in or to any such building shall be so constructed as to open outward, when possible, and shall not be so fastened during the working hours as to prevent free egress. Substantial hand rails shall be provided on all stairways in every such building. ('13 c. 316 § 17) [3878]

4158. Fire escapes—Counter balance stairs—If any such building where persons are employed be more than two stories high, it shall be the duty of the owner of such building to provide at least one fire escape, and as many more as the labor commissioner may require, not exceeding one additional escape for every one hundred persons employed above the first floor. Every such fire escape shall be on the outside of the building, connecting on each floor above the first with at least two openings; shall be well fastened and secured, with landings not less than six feet in length and three in width; guarded by an iron railing not less than three feet in height. Such landings shall be connected by iron stairs, not less than two feet wide, and with steps of not less than six-inch treads, placed at an angle of not more than forty-five degrees, and protected by a well-secured hand rail on both sides, with a counter-balanced stair, two feet wide, reaching from the lower platform to the ground. Such fire escape shall be sufficient if constructed on any other plan approved by the labor commissioner. The openings to each fire escape shall be as far as practicable from the stairway and elevator shafts, and the ladder of each fire escape shall extend to the roof. Stationary stairs or ladders shall also be provided on the inside from the upper story to the roof. All doors opening onto a fire escape shall be metal covered, and all glass used in doors or windows above the first floor opening onto a fire escape or directly under a fire escape shall be wire glass set in metal frames. Such fire escape shall be kept free of snow, ice and all other obstructions. A suitable disposition shall be made of all inflammable articles and suitable waste cans or barrels shall be provided for the proper handling of sweepings, oily waste or other incombustible material as directed by the labor commissioner. Such inflammable waste and materials shall be removed from the workrooms each day and not permitted to accumulate. Each factory, mill and work shop more than two stories high shall also be provided with inside and outside standpipes, and with hose

connected therewith, as required in the case of hotels of the same height, and with chemical fire extinguishers or pails of water or sand on each floor, always ready for use. Provided, that when a building is equipped with an automatic sprinkler system, installed in accordance with the rules of the board of fire underwriters, inside standpipes or other extinguishing apparatus shall only be required when deemed necessary by the commissioner of labor. ('13 c. 316 § 18, amended '19 c. 108 § 1) [3879]

137-24, 162+680.

4159. Notices, etc., how served—Liability of owners, etc.—Every order, suggestion, or notice served upon any employer of labor, owner or manager of any building, or other person, shall be certified by a receipt for the same taken by the officer or employee of the labor department serving such order, suggestion or notice, which receipt shall be signed by the owner, manager or superintendent of said employer. No liability to any person other than an employee shall attach to any owner of any factory, mill, workshop, engineering works, or mercantile establishment, because of the provisions of this act, until notice to comply with the terms of this act has been served upon such owner by an officer or employee of the labor department of this state, and reasonable time to comply with such notice has elapsed. ('13 c. 316 § 19) [3880]

4160. Penalties for violations—Prosecution, when to be commenced—Every person who violates or fails to comply with any requirement of this chapter, or disregards any order, notice or direction of any member or employee of the labor department made in accordance with its provisions, or who obstructs or interferes with any inspection being made pursuant thereto, or who removes from any machine any notice stating that such machine is dangerous and unsafe, or who operates any such machine while such notice is attached and such machine is still unguarded and unsafe, shall be guilty of a misdemeanor, the minimum penalty whereof shall be a fine of twenty-five dollars, or imprisonment for fifteen days. But whenever notice is required before prosecution, no criminal proceeding shall be commenced until thirty days after such notice, nor then, if within such time the requirements of the notice have been met; Provided, that if such requirement be to put a water-closet or privy in sanitary condition, where the only defect is due to carelessness in its management, or to put an elevator in safe condition, only forty-eight hours shall be allowed. In case of application to the court to restrain, the time aforesaid shall not begin to run until the decision thereon. ('13 c. 316 § 20) [3881]

190+258.

4161. "Prime mover" defined—Other terms, how interpreted—The term "prime mover" as used in this act shall include all steam, gas, oil, or other kinds of engines, and also all electrical apparatus which generates, converts, or transmits power.

The words "guard," "guarded," "safeguard," "safeguarded" and "protection," shall be given a broad interpretation, so as to include any practicable method of mitigating or preventing a specific danger. ('13 c. 316 § 21) [3882]

4162. Laws repealed—Sections 1813, 1814, 1815, 1816, 1817, 1820 and 1824, Revised Laws of 1905, and sections 1, 2, 3, 4, 5 and 7 of chapter 288, General Laws of 1911, and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed. ('13 c. 316 § 22) [3883]

124-19, 144+431; 125-31, 145+628.

4163. Corn shredders, etc.—Safety devices to be approved by commissioner—Sale, when prohibited—No person, firm or corporation shall sell, offer or expose for sale any machine to be operated by steam or other power, for the purpose of husking or shredding corn, or corn stalks unless the said machine shall be provided with reasonable safety devices approved by the commissioner of labor for the protection from accidents from the snapping rollers and husking rollers, and shall be so guarded that the person feeding said machine shall be compelled to stand at a reasonable safe distance from the snapping rollers. ('11 c. 354 § 1) [3884]

Corn husking machine unguarded. 133-28, 157+899.

4164. Machines purchased prior to act—No person, firm or corporation shall use, operate or permit to be used or operated any such machine purchased prior to the passage and publication of this act, unless during all the time such machine shall be used and operated, it shall be in charge of a competent person, whose sole duty shall be to oversee and attend to the operating and use of the same. ('11 c. 354 § 2) [3885]

4165. Penalty for violation—Any such person, firm or corporation, who shall violate any of the provisions of this act shall be punished by a fine of not less than twenty-five dollars (\$25) or more than one hundred dollars (\$100.00) for each offense. ('11 c. 354 § 3) [3886]

4166. Employer must furnish helmets—It shall be unlawful for any employer of labor in this state to require or permit any employe to engage in any occupation or process of employment in which there is danger of serious injury to the eyes of such employes, or of surrounding workmen, from flying objects or particles thrown by machines or tools, or from the splashing of hot substances or chemicals, unless and until the employer shall furnish to each employe subjected to such hazards goggles, helmets, or other practical protective devices to prevent such injuries. ('21 c. 113 § 1)

4167. Employe must wear helmet—It shall be unlawful for any employe to engage in any occupation or process of employment mentioned in section 1 of this act unless he shall wear or use the protective devices furnished by the employer during the entire time he is engaged in such occupation or employment. ('21 c. 113 § 2)

4168. Application. The provisions of this act shall not apply to persons employed in steam and electric transportations. ('21 c. 113 § 2½)

4169. Commission to approve devices—The goggles and helmets required in section 1 of this act shall be of a design and material approved by the commissioner of labor for the purposes required, and shall be furnished separately for each employe using them without cost to such employe, and no employe shall be required nor shall he use the goggles or helmet furnished to another until the same has been adequately sterilized to prevent the transmission of diseases. ('21 c. 113 § 3)

4170. Violations—Penalties—Every employer neglecting or refusing to furnish the goggles, helmets, or other protective devices required in this act, after being notified to do so by the commissioner of labor or his assistants, or who requires an employe to use the goggles or helmet provided for another employe before the same has been properly sterilized, and any employe who neglects or refuses to use the devices furnished by the employer, or who uses the goggles or helmet furnished to another before it has been properly sterilized, shall be guilty of a misdemeanor, punishable by a fine of not less than twenty-five (\$25) dollars, or by imprisonment for not less than fifteen (15) days.

Violations of this act shall not affect the right of an employe to compensation or to damages under the laws of this state for injury sustained by neglect to comply with the requirements of this act. Provided, however, that this act shall not apply to nor include farm labor. ('21 c. 113 § 4)

Question whether section extends to others besides employes. 124-65, 144+434.

4171. Definition—The term "all places of employment" as used in this act shall mean any place, either inside or outside, where any business or industry is carried on and in which persons are employed and shall include factories, mills, workshops, laundries, dyeing and cleaning establishments, mercantile establishments, offices and office buildings, hotels, restaurants, theatres and other places of amusement, transportation systems, public utilities, engineering works, the erection of buildings, and yards; but shall not be construed to apply to domestic service or agricultural labor. ('19 c. 491 § 1)

4172. Duty of employer—In all places of employment it shall be the duty of the employer to keep the floors and walls of buildings or parts of buildings, the grounds surrounding such buildings, and the machinery, fixtures and utensils in such buildings, over which he may have control, in as clean and sanitary a condition as the nature of the industry will permit. Where wet processes are used, the floors must be so drained that there is no measurable depth of water in which employes must stand while working. Where practicable, dry standing room must be provided for all employes. Suitable receptacles shall be provided and used for the storage of waste and refuse; such receptacles shall be maintained in a sanitary condition. All waste, refuse, sweepings and decomposed matter shall be removed from such buildings daily, and in such manner as not to cause a nuisance. All cleaning shall be done, as far as possible, out of working hours; but if done during working hours, shall be done in such a manner as to avoid unnecessary raising of dust or noxious odors. All such places of employment shall be well drained and the plumbing thereof at all times kept in proper repair and in a clean and sanitary condition. In all such places of employment the floors shall be scrubbed and the walls cleaned whenever and so often as the commissioner of labor deems it necessary. ('19 c. 491 § 2)

4173. Arrangements of, and sanitary conditions of interior of buildings—Every place of employment used for the preparation, manufacture, sale, or storage of food products shall be properly lighted, drained, plumbed, and ventilated, and conducted with strict regard to the influence of such conditions upon the health of persons therein employed, and the purity and wholesomeness of the food products therein prepared, manufactured, sold or stored. The side walls and ceilings of all rooms used for the purposes named in this section shall be of a material that can easily be cleaned and kept clean, and shall be limewashed or painted whenever in the opinion of the commissioner of labor the same is necessary. The floors in such places shall be impermeable, and made of cement or tile laid in cement, brick, wood or other suitable, non-absorbent material which can be flushed and washed clean with water or otherwise kept in a clean and sanitary condition. The doors, windows, and other openings of such places shall, where practicable, be fitted with stationary or self-closing screen doors and wire window screens during such months as they are necessary to exclude flies and other insects. No employe of any

such place shall expectorate or discharge any substance from his mouth or nose on the floor or interior side wall of any room used for the purposes mentioned in this section. Cuspidors, for the use of employes, shall be provided, and each cuspidor shall be emptied and washed out daily with disinfectant solution and a portion of such solution shall be left in each cuspidor while in use. No water closet, earth closet, privy, ash pit, or sleeping room for employes shall be in, or communicate directly with any room used for the purposes mentioned in this section. All employes of such places, engaged in the manufacture and handling of bakery products shall wear clothing of washable material which shall be used for that purpose only, and such garments shall be kept clean at all times. ('19 c. 491 § 3)

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230nw 125
4174
180m 21

4174. Ventilation—In every place of employment the employer shall provide in each workroom thereof, proper and sufficient means of ventilation, and shall maintain proper and sufficient ventilation. If excessive smoke, steam, gas, fumes, vapors, dust or other impurities are created or generated by the manufacturing process or handicraft carried on therein, in sufficient quantities to obstruct the vision, or to be irritating, obnoxious, or injurious to the health or safety of the employes therein, the rooms shall be ventilated in such manner as to remove them or render them harmless, so far as is practicable. If in the opinion of the commissioner of labor it is deemed necessary, he may order the installation of exhaust fans and other mechanical means of a proper construction to effectively remove from the point of origin such smoke, steam, gases, fumes, vapors, dust or other impurities. If the removal of such smoke, steam, gases, fumes, vapors, dust or other impurities is, because of the nature of the process, impracticable, the commissioner of labor may, if he deems it necessary to the health of the workers in any place of employment, order the isolation of such process or handicraft in a separate room or building. ('19 c. 491 § 4)

Action for damages by employee becoming afflicted with disease. 161-240, 201+305.

4175. Certain employes in certain rooms—No more employes shall be required or permitted to work in a room in any place of employment than will allow to each of such employes not less than four hundred (400) cubic feet of air space, unless by a written permit of the commissioner of labor such amount of air space for each employe may temporarily be reduced to not less than two hundred fifty (250) cubic feet of air space. Provided, that no such permit shall be issued for a room in which smoke, gas, fumes, dust or vapors are generated or in which there are fires consuming oxygen. ('19 c. 491 § 5)

4176. Heat and ventilation—In every place of employment the workrooms shall, so far as the nature of the industry will permit, be properly heated during cold weather. In every place of employment where excessive heat be created in any of the workrooms by the nature of the process therein carried on it shall be the duty of the employer to provide heat deflectors, exhaust fans and such other mechanical means that are necessary to protect from the heat and to carry off, so far as practicable, such excessive heat and to cool off such workrooms. After the passage of this act it shall be unlawful in any place of employment to establish any process or handicraft which creates excessive heat in any workroom the ceiling of which is less than eight feet from the floor of such workroom or the floor of any balcony in such workroom.

The use of salamanders or other heaters that discharge smoke or gas into a workroom in which workers are employed is prohibited. ('19 c. 491 § 6)

4177. Toilet facilities—In every place of employment there shall be provided adequate toilet facilities which shall be located conveniently to and easily accessible from all places where persons are employed. Each water-closet, urinal, lavatory or slop sink located in a toilet room, must be connected with a sewer system where a sewer system is available. Indecent or suggestive marks, pictures or words are forbidden in toilet rooms, and such defacement when found by the employer must be at once removed. ('19 c. 491 § 7)

4178. Sanitation—All toilet rooms not having sewer connection and maintained outside of buildings where persons are employed, shall on new installations be at least twenty-five (25) feet from such buildings. In all places of employment where the workers are exposed to excessive heat, humidity, or fatigue from physical exertion, there shall be a covered passageway connecting said buildings with such toilet or toilets. ('19 c. 491 § 8)

4179. Separate toilets—In all places of employment where five or more persons are employed and are of opposite sex, separate toilets for each sex shall be provided and maintained. Such toilets shall be so marked as to designate plainly and distinctly the sex for whose use they are intended, and no person shall be allowed to use the toilet room assigned to the opposite sex. ('19 c. 491 § 9)

4180. Construction of toilets.—The toilets in all places of employment must be so constructed as to insure privacy. The outside partitions of all toilet rooms shall be of solid construction, and may be opaque or translucent, but not transparent, and shall extend from floor to ceiling, or such rooms shall be independently ceiled over. All partitions separating toilet rooms provided for the different sexes shall be constructed of such materials as are not transparent or translucent, and they shall be sound-proof, and no opening in such partitions shall be permitted. If the water-closet is not located within a separate compartment in the toilet room, the entrance to such toilet room shall be provided with a screen of sufficient height and width to insure privacy. The floors of all toilet rooms shall be tight, smooth and constructed of a material that can be kept in a sanitary condition. The walls and ceiling shall be tight and of such substance that can be readily cleaned and kept clean. ('19 c. 491 § 10)

4181. To be kept in perfect condition—In all places of employment the toilet rooms, and every part thereof, including the floor, walls and ceiling, and all fixtures therein, must be kept in a clean condition. All toilet rooms and water-closet compartments shall be adequately illuminated by natural or artificial light. All toilet rooms not lighted by windows that open easily shall be adequately ventilated to the outside air by artificial means. All toilet facilities shall be adequately protected to prevent the entrance and breeding of flies, so far as practicable. All toilet rooms, wherever practicable shall be adequately heated at all times. ('19 c. 491 § 11)

4182. Ratio of toilets—In all places of employment, water-closets shall be provided in the following number and ratio: When there are one hundred (100) or less persons on a shift employed, there shall be one water-closet for every twenty (20) persons; when there are one hundred (100) to five hundred (500) persons on a shift, there shall be one water-closet to every

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229nw 136
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4177
170m 325
See 4181

4181
229nw 136
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thirty (30) persons; when there are five hundred (500) to one thousand (1,000) persons on a shift, there shall be one water-closet to every thirty-five (35) persons on a shift, and when there are over one thousand (1,000) persons on a shift, there shall be one water-closet to every forty (40) persons on a shift.

When there are more than one hundred (100) men employed on a shift there shall, in addition to the water-closets required by this section, be provided one urinal for every fifty (50) men.

Urinals shall be either individual or slab urinals. At least two (2) feet of slab urinal shall be considered the equivalent of one (1) individual urinal. ('19 c. 491 § 12)

4183. Washing basins and individual towels—Every place of employment shall provide, without expense to the employe, adequate facilities for washing the hands and face of the employes. Individual towels shall be provided by the employer, and the use of towels in common is prohibited.

In all places where food is prepared or manufactured; in all places where poisonous or injurious materials are handled by the employes, and in all places where the employes are required by the nature of the process at which they are employed to become covered with oil, grease, soot, or other material not easily removed, the employer shall provide hot and cold water and soap in sufficient quantities to permit employes to make themselves clean. ('19 c. 491 § 13)

4184. Dressing rooms—In every place of employment in which a change of clothing is necessary for any of the employes in doing their work, suitable dressing rooms shall be provided and shall be separate for the sexes. All such dressing rooms shall be kept in a clean and sanitary condition and be adequately ventilated. In all places of employment where poisonous compounds are handled by the employes, facilities for hanging and storing both working and street garments shall be provided so that they will not come in contact with each other, nor with the garments of others. All such dressing rooms installed after the passage of this act shall be enclosed by means of solid partitions or walls, shall be so separated from toilet rooms, and shall have at least one window opening to the outer air, or other means of properly ventilating such rooms. ('19 c. 491 § 14)

4185. Eating of food—In every place of employment it shall be unlawful to keep or eat any food in a room in which the dust or fumes of poisonous compounds are present. In such places of employment the employer shall provide a suitable place in which employes may eat their meals. No employe engaged in handling such poisonous compounds shall go out or be allowed to go out for lunch or to eat his or her lunch on the premises without first washing his or her hands, and, if necessary, washing his or her face. ('19 c. 491 § 15)

4186. Seating capacity—In all places of employment where women are employed, the employer thereof shall provide and maintain suitable seats, with proper backs where practicable, for the use of such women employes, and permit the use thereof by such employes to such an extent as may be reasonable for the preservation of their health. In all places where women are engaged in work which can be properly performed in a sitting posture, suitable seats, with backs where practicable, shall be supplied in every factory for the use of all such women employes and permitted to be used at such work. The commissioner of labor may determine when seats, with or without

backs, are necessary and the number thereof. ('19 c. 491 § 16)

4187. Drinking water—Every place of employment shall provide, without expense to the employes, an adequate supply of pure drinking water. When practicable, ice used for cooling purposes shall be applied in such manner that the ice itself will not come in contact with the drinking water, and the water from the melting ice shall not become mixed with the drinking water. In all places of employment where no running water can be provided, the receptacle for holding the drinking water shall at all times be kept in a clean and sanitary condition, and must be kept covered to prevent dust or impurities from entering such receptacle. ('19 c. 491 § 17)

4188. Owner to carry out provision of act—Whenever any building is occupied by more than one place of employment and the halls, stairs, toilets, or other portions of the building are used jointly by more than one tenant, or in which conditions prohibited by this act are jointly created by more than one tenant, it shall be the duty of the owner of such building to carry out the provisions of this act. Provided, that the owner of any such building may arrange by agreement, with one or more of his tenants to assume responsibility for carrying out the provisions of this act. ('19 c. 491 § 18)

4189. Commissioner of labor to enforce provisions—It shall be the duty of the commissioner of labor to enforce the provisions of this act. Thirty (30) days' notice shall be given for any new installations required by this act before any criminal proceeding shall be commenced; but the commissioner of labor may, for good cause shown, extend the time to a longer period. All orders to place toilets, floors and receptacles in a sanitary condition shall be complied with in forty-eight (48) hours. Any persons, firm or corporation violating the provisions of this act, or failing to comply, in the time specified, with any order of the commissioner of labor, shall be guilty of a misdemeanor, punishable by fine or imprisonment at the discretion of the court. Any person, firm or corporation aggrieved at any order of the commissioner of labor issued pursuant to this act may apply for a restraining order to the district court in the manner and as provided in section 3822, General Statutes of 1913. ('19 c. 491 § 19)

4190. Certain sections repealed—Sections 3837, 3838, 3887, 3890, 3853, 3854 and 3855, and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed. ('19 c. 491 § 20)

Sections repealed are sections of G. S. 1913.

4191. Underground apartments, etc.—No basement, cellar, underground apartments, or other place which the commissioner of labor shall condemn as unhealthy and unsuitable shall be used as a workshop, factory or place of business in which any person or persons shall be employed. ('09 c. 289 § 1) [3838]

4192. Penalty for violation—Any person, firm or corporation violating any of the provisions of this act shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, nor less than twenty-five dollars, or by imprisonment for not more than ninety days, nor less than thirty days, or by both such fine and imprisonment, for each offense. ('09 c. 289 § 2) [3889]

4193. Report of accidents—Whenever any accident to an employe, resulting in death or requiring the aid of a surgeon, occurs in connection with any factory,

mill, workshop, or any engineering work, the employer, superintendent, or agent in charge, within ten days thereafter, shall furnish the labor commissioner with written notice thereof, stating as fully as possible the time and place of its occurrence, the name and residence of the person killed or injured, and, in case of injury, the place to which he has been removed. (1821) [3891]

4194. Scope of report—It is hereby made the duty of every employer of labor, engaged in industrial pursuits, to make or cause to be made, report of any accident to an employe, which occurs in the course of his or her employment and which causes death or serious injury, within forty-eight hours of the occurrence of such injury and of all other accidents, which occur to any of its, his or their employes within the scope of their employment, and of which the employer or his foreman has knowledge, within fourteen days after the occurrence of such accident. Provided, that such injuries are sufficient to wholly or partially incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was incurred, which report shall be made in writing to the commissioner of labor of the state, giving:

- (a) Name, age, sex and occupation of injured person.
- (b) Date on which accident occurred and hour of day.
- (c) Whether person injured could speak English.
- (d) Occupation of employer.
- (e) The cause of injury.
- (f) The nature and extent of the injury and the probable length of disability.
- (g) The name and address of the attending surgeon.
- (h) Wages injured person was earning.
- (i) Length of time in service of employer and length of time at employment at which injured.
- (j) Dependents or nearest relative, in fatal cases, if known.

Provided, that accidents required to be reported within forty-eight hours may be reported by telegram, telephone or personal notice. The written report of such accident shall then be made within fourteen days or at such time as the commissioner of labor shall designate. The commissioner of labor may require such supplementary reports on any accident as he deems necessary for the securing of the information required by this law.

Provided, further, that when an accident has been reported which subsequently terminates fatally, a supplementary report shall be filed with the commissioner of labor by the employer within forty-eight hours after he receives knowledge of such death, stating that the injury has proved fatal. ('13 c. 416 § 1, amended '19 c. 359 § 1) [3892]

150-365, 155-388.

4195. Copies of settlement—Copies of all settlements made or releases obtained in respect to industrial accidents occurring in the state of Minnesota shall be filed with the labor commissioner within ten days after such settlements are made and shall become part of the permanent records of the department. ('13 c. 416 § 2, amended '19 c. 359 § 1) [3893]

4196. Failure to report—The failure to make such reports or file such copies of settlements or releases, on the part of any person, copartnership or corporation required hereby to make or file the same, within the time herein specified, is hereby declared to be a

misdeemeanor. ('13 c. 416 § 3, amended '19 c. 359 § 1) [3894]

4197. Admissibility of report—No report herein required to be made nor any part thereof, shall be admitted in evidence or referred to at the trial of any action, or in any judicial proceedings whatsoever, except prosecutions for the violation of this act.

No such report nor any part thereof, nor any copy of the same, nor any part thereof, shall be open to the public, nor shall any of the contents thereof be disclosed in any manner, by any official or clerk or other employe of the state having access thereto, but the same may be used for state investigations and statistics only. Any such disclosure is hereby declared to be a misdemeanor and punishable as such. ('13 c. 416 § 4, amended '19 c. 359 § 1) [3895]

4198. Physicians to send notice of certain cases of poison to commissioner—Every physician attending on or called in to visit a patient whom he believes to be suffering from poisoning from lead, phosphorus, arsenic or mercury or their compounds, or from anthrax, or from compressed air illness, contracted as a result of the nature of the patient's employment shall send to the commissioner of labor a notice stating the name and full postal address and place of employment of the patient and the disease from which in the opinion of the physician, the patient is suffering, with such other specific information as may be required by the commissioner of labor and which may be ascertained by the physician in the course of his duties. ('13 c. 21 § 1) [3899]

4199. Same—Failure a misdemeanor—If any physician, when required by section 1 of this act to send a notice, fails forthwith to send same, he shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding ten dollars, or by imprisonment in the county jail for not exceeding ten days. ('13 c. 21 § 2) [3900]

4200. Commissioner to enforce—It shall be the duty of the commissioner of labor to enforce the provisions of this section, and he may call upon the state and local boards of health for assistance. ('13 c. 21 § 3) [3901]

4201. Interference with employment—No individual, corporation, member of any firm, or any agent, officer, or employe of any of them, shall contrive or conspire to prevent any person from obtaining or holding any employment, or discharge, or procure or attempt to procure the discharge of, any person from employment, by reason of his having engaged in a strike. (1822) [3902]

4202. Conditions precedent not required—No person, whether acting directly or through an agent, or as the agent or employe of another, shall require, as a condition precedent to employment, any written statement as to the participation of the applicant in a strike, or as to his personal record, save as to his conviction of a public offense, for more than one year immediately preceding the date of his application therefor; nor shall any person, acting in any of the aforesaid capacities, use or require blanks or forms of application for employment in contravention of this section. (1823) [3903]

DIVISION OF BOILER INSPECTION

4203. Division of boiler inspection established—On and after the first day of June, 1921, there shall be a division in the Department of Labor and Industries to be known as the "Division of Boiler Inspection." The chief of such division shall be known as the "Chief of

the Division of Boiler Inspection" and he shall have an assistant to be known as the "Deputy Chief of the Division of Boiler Inspection." There shall also be in such division a District Boiler Inspector for each Boiler Inspection District then provided for by law. ('21 c. 83 § 1)

4204. Powers and duties—On and after the first day of June, 1921, the powers and duties then by law vested in and imposed on the Board of Boiler Inspectors, the District Boiler Inspectors, the Chief Boiler Inspector and his subordinates, shall be exercised and performed by the Industrial Commission and its subordinates as functions of the Division of Boiler Inspection. ('21 c. 83 § 2)

4205. Boiler inspector to be head of division—On the first day of June, 1921, the then incumbent of the office of Chief Boiler Inspector shall become "Chief of the Division of Boiler Inspection," the then incumbent in the office of Deputy Chief Boiler Inspector shall become "Deputy Chief of the Division of Boiler Inspection," and the then incumbents of the offices of District Boiler Inspectors shall become District Boiler Inspectors under this act; and all persons then holding subordinate positions in the office of Chief Boiler Inspector shall be transferred by the Industrial Commission to the Division of Boiler Inspection and assigned to such positions as the Industrial Commission shall designate. ('21 c. 83 § 3)

4206. Offices of officials terminate—On and after the first day of June, 1921, the Board of Boiler Inspectors and, as now constituted, the offices of Chief Boiler Inspector and Deputy Chief Boiler Inspector shall terminate. ('21 c. 83 § 4)

4207. Fees—All fees hereafter collected in the administration of functions heretofore exercised and performed by the Board of Boiler Inspectors, District Boiler Inspectors, Chief Boiler Inspector and Deputy Chief Boiler Inspector, except as otherwise provided by Chapter 240, Laws of 1919 shall be paid into the State Treasury in the manner provided by law for fees received by other state departments. ('21 c. 83 § 5)

Explanatory note—For Laws 1919, c. 240, see §§ 5474 to 5494, herein.

4208. Reports and notices—All reports and notices heretofore required by law to be made, or given to the Board of Boiler Inspectors, District Boiler Inspectors, or the Chief Boiler Inspector, shall be hereafter made or given to the Industrial Commission. ('21 c. 83 § 6)

4209. Inconsistent acts repealed—All acts and parts of acts so far as inconsistent with the provisions of this act and not otherwise are hereby repealed. ('21 c. 83 § 7)

MINIMUM WAGES.

4210. Duties of minimum wage commission transferred—On and after the first day of June, 1921, the powers and duties then by law vested in and imposed upon the Minimum Wage Commission shall be exercised and performed by the Industrial Commission of Minnesota and its subordinates, as a part of the functions of the division of women and children in the Department of Labor and Industries. ('21 c. 84 § 1)

4211. Secretary and employees transferred—On the first day of June, 1921, persons then serving as secretary and employees of the Minimum Wage Commission, shall be transferred by the Industrial Commission to the division of women and children in the Department of Labor and Industries and assigned to such positions as the Industrial Commission shall designate. ('21 c. 84 § 2)

4212. Minimum wage commission abolished—On and after the first day of June, 1921, the Minimum Wage Commission, as heretofore constituted, shall have no further legal existence, except that it shall, within ten days after such date, submit to the Governor a report covering the period extending to such date from the date of the last report of such Minimum Wage Commission. ('21 c. 84 § 3)

4213. Inconsistent acts repealed—All acts and parts of acts so far as inconsistent with the provisions of this act and not otherwise are hereby repealed. ('21 c. 84 § 4)

4214. To investigate wages of women and minors—The commission may at its discretion investigate the wages paid to women and minors in any occupation in the state. At the request of not less than one hundred persons engaged in any occupation in which women and minors are employed, the commission shall forthwith make such investigation as herein provided. ('13 c. 547 § 2) [3905]

145-267, 177+343.

4215. Duties of employers—Register—Every employer of women and minors shall keep a register of the names and addresses of and wages paid to all women and minors employed by him, together with number of hours that they are employed per day or per week; and every such employer shall on request permit the commission or any of its members or agents to inspect such register. ('13 c. 547 § 3) [3906]

4216. Public hearings—Witnesses, etc.—The commission shall specify times to hold public hearings at which employers, employees, or other interested persons may appear and give testimony as to wages, profits and other pertinent conditions of the occupation or industry. The commission or any member thereof shall have power to subpoena witnesses, to administer oaths, and to compel the production of books, papers, and other evidence. Witnesses subpoenaed by the commission may be allowed such compensation for travel and attendance as the commission may deem reasonable, to an amount not exceeding the usual mileage and per diem allowed by our courts in civil cases. ('13 c. 547 § 4) [3907]

131-120, 154+752; 145-265, 177+343.

4217. Legal minimum wages to be established—If after investigation of any occupation the commission is of opinion that the wages paid to one-sixth or more of the women or minors employed therein are less than living wages, the commission shall forthwith proceed to establish legal minimum rates of wages for said occupation, as hereinafter described and provided. ('13 c. 547 § 5) [3908]

4218. Wages, how determined—Order of commission—Copies to be mailed and posted—The Industrial Commission of Minnesota shall determine the minimum wages sufficient for living wages for women and minors of ordinary ability and also the minimum wages sufficient for living wages for learners and apprentices. The commission shall then issue an order to be effective thirty days thereafter, making the wages thus determined the minimum wages in said occupation throughout the state, or within any area of the state if differences in the cost of living warrant this restriction.

Such order shall be published in one issue of a daily newspaper of general circulation published in each city of the first-class, at least 20 days before the same takes effect, and proof of such publication as required in the publication of legal notices, together with the original order shall be filed with the Commission. A copy of

such order and of the proofs of publication, duly certified by the Secretary of said Commission, shall be prima facie evidence of the existence of such order and the contents thereof, and of the facts of publication as contained in such certified copies, and the certificate of the Secretary of said Commission shall be prima facie evidence of the filing and of other acts required by law in relation to said order.

The Commission shall mail to each employer affected by said order, whose name and address is known to the Commission, a copy or copies of said order with such general or particular directions for posting the same as the Commission may determine, and such employer shall post such order or orders and keep the same posted in his factory or place where women or minors are employed, as required by said Commission. Provided, however, that failure to mail such orders to any employer affected thereby shall not relieve such employer from the duty to comply with such order in relation to the payment of a wage not less than the minimum prescribed in such order. ('13 c. 547 § 6, amended '23 c. 153 § 1) [3909]

Who deemed persons of ability determined by courts. 150-123, 184+787.

4219. Advisory boards—Powers and duties of commission—The commission may at its discretion establish in any occupation an advisory board which shall serve without pay, consisting of not less than three nor more than ten persons representing employers, and an equal number of persons representing the workers in said occupation, and of one or more disinterested persons appointed by the commission to represent the public; but the number of representatives of the public shall not exceed the number of representatives of either of the other parties. At least one-fifth of the membership of any advisory board shall be composed of women, and at least one of the representatives of the public shall be a woman. The commission shall make rules and regulations governing the selection of members and the modes of procedure of the advisory boards, and shall exercise exclusive jurisdiction over all questions arising with reference to the validity of the procedure and determination of said boards. Provided: that the selection of members representing employers and employees shall be, so far as practicable, through election by employers and employees respectively. ('13 c. 547 § 7) [3910]

139-45, 165+495; 145-268, 177+343.

4220. Powers and duties of boards—Estimates of wages to be recommended—Each advisory board shall have the same power as the commission to subpoena witnesses, administer oaths, and compel the production of books, papers, and other evidence. Witnesses subpoenaed by an advisory board shall be allowed the same compensation as when subpoenaed by the commission. Each advisory board shall recommend to the commission an estimate of the minimum wages, whether by time rate or by price rate, sufficient for living wages for women and minors of ordinary ability, and an estimate of the minimum wages sufficient for living wages for learners and apprentices. A majority of the entire membership of an advisory board shall be necessary and sufficient to recommend wage estimates to the commission. ('13 c. 547 § 8) [3911]

131-120, 154+752; 139-45, 165+498; 145-265, 177+343.

4221. Commission to review—May determine wages in conformity—Upon receipt of such estimates of wages from an advisory board, the commission shall review the same, and if it approves them shall make

them the minimum wages in said occupation, as provided in section 6. Such wages shall be regarded as determined by the commission itself and the order of the commission putting them into effect shall have the same force and authority as though the wages were determined without the assistance of an advisory board. ('13 c. 547 § 9) [3912]

4222. Wages to remain in force, etc.—New rates—All rates of wages ordered by the commission shall remain in force until new rates are determined and established by the commission. At the request of approximately one-fourth of the employers or employees in an occupation, the commission must reconsider the rates already established therein and may, if it sees fit, order new rates of minimum wages for said occupation. The commission may likewise reconsider old rates and order new minimum rates on its own initiative. ('13 c. 547 § 10) [3913]

4223. Employment at lesser wage—Special license—For any occupation in which a minimum time rate of wages only has been ordered the commission may issue to a woman physically defective a special license authorizing her employment at a wage less than the general minimum ordered in said occupation; and the commission may fix a special wage for such person. Provided: that the number of such persons shall not exceed one-tenth of the whole number of workers in any establishment. ('13 c. 547 § 11) [3914]

4224. Employment at less than minimum wage prohibited—Every employer in any occupation is hereby prohibited from employing any worker at less than the living wage or minimum wage as defined in this act and determined in an order of the commission; and it shall be unlawful for any employer to employ any worker at less than said living or minimum wage. ('13 c. 547 § 12) [3915]

Prohibits employing below a living wage. 139-37, 165+495; 145-268, 177+343.

Granting that the decision of the United States Supreme Court in *Adkins v. Children's Hospital*, 261 U. S. 525, 43 S. Ct. 394, 67 L. Ed 785, 24 A. L. R. 1238, in effect rules that c. 547, L. 1913 (Minimum Wage Law for Women and Minors), infringes the federal Constitution so far as the act relates to adult women, nevertheless, since the court took pains to exclude from consideration the right of the Legislature to fix a minimum wage for minors, the inference is that as to them such act is a valid exercise of the police power of the state. 161-444, 201+629.

4225. Discrimination against certain employees prohibited—It shall likewise be unlawful for any employer to discharge or in any manner discriminate against any employee because such employee has testified, or is about to testify, or because such employer believes that said employee is about to testify, in any investigation or proceeding relative to the enforcement of this act. ('13 c. 547 § 13) [3916]

4226. Actions to recover full wages—Any worker who receives less than the minimum wage ordered by the commission shall be entitled to recover in civil action the full amount due as measured by said order of the commission, together with costs and attorney's fees to be fixed by the court, notwithstanding any agreement to work for a lesser wage. ('13 c. 547 § 14) [3917]

4227. Commission to enforce, etc.—The commission shall enforce the provisions of this act, and determine all questions arising thereunder, except as otherwise herein provided. ('13 c. 547 § 15) [3918]

4228. Biennial report—The commission shall biennially make a report of its work to the governor and the state legislature, and such reports shall be printed

and distributed as in the case of other executive documents. ('13 c. 547 § 16) [3919]

4229. Expenses and salary—The members of the commission shall be reimbursed for traveling and other necessary expenses incurred in the performance of their duties on the commission. The woman member shall receive a salary of eighteen hundred dollars annually for her work as secretary. All claims of the commission for expenses necessarily incurred in the administration of this act, but not exceeding the annual appropriation hereinafter provided, shall be presented to the state auditor for payment by warrant upon the state treasurer. ('13 c. 547 § 17) [3920]

4230. Appropriation—There is appropriated out of any money in the state treasury not otherwise appropriated for the fiscal year ending July 31st, 1914, the sum of five thousand dollars (\$5,000.00), and for the fiscal year ending July 31st, 1915, the sum of five thousand dollars (\$5,000.00). ('13 c. 547 § 18) [3921]

4231. Violation by employer misdemeanor—Any employer violating any of the provisions of this act shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than ten nor more than fifty dollars or by imprisonment for not less than ten nor more than sixty days. ('13 c. 547 § 19) [3922]

4232. Construction of terms—Throughout this act the following words and phrases as used herein shall be considered to have the following meanings respectively, unless the context clearly indicates a different meaning in the connection used:

(1) The terms "living wage" or "living wages" shall mean wages sufficient to maintain the worker in health and supply him with the necessary comforts and conditions of reasonable life; and where the words "minimum wage" or "minimum wages" are used in this act, the same shall be deemed to have the same meaning as "living wage" or "living wages."

(2) The terms "rate" or "rates" shall mean rate or rates of wages.

(3) The term "commission" shall mean the minimum wage commission.

(4) The term "woman" shall mean a person of the female sex eighteen years of age or over.

(5) The term "minor" shall mean a male person under the age of twenty-one years, or a female person under the age of eighteen years.

(6) The terms "learner" and "apprentice" may mean either a woman or a minor.

(7) The terms "worker" or "employee" may mean a woman, a minor, a learner or an apprentice, who is employed for wages.

(8) The term "occupation" shall mean any business, industry, trade or branch of a trade in which women or minors are employed. ('13 c. 547 § 20) [3923]

INSPECTORS OF MINES

4233. Appointment—Term — Compensation — Removal—That the board of commissioners of any county in this state where there are at least five mines situate and in operation is hereby authorized and directed on or before the first day of July, 1905, to appoint an inspector of mines, who shall hold office for the term of three years or until his successor is appointed and qualified for the purpose of discharging the duties hereinafter prescribed; to fix the compensation and traveling expenses of such inspector and provide for the payment of the same, and to remove such inspector and appoint another in his place whenever in the judg-

ment of said board the best interests of the owners and employes of such mines may so require, and to fill vacancies arising from any other cause than removal. ('05 c. 166 § 1) [3924]

4234. Inspector of mines—Salary—Qualifications—Salary and Expenses—Oath—Bond—Such inspector of mines shall be at least twenty-five years of age, a citizen of the state of Minnesota and a resident of the county wherein he is appointed, shall be of good moral character and temperate habits, and shall have had previous to his appointment practical experience as a miner or otherwise engaged as an employe in mines of the state at least six years, or a mining engineer having had previous to his appointment at least two years' practical experience in iron mines and iron mining and having had at least one year's such experience in this state. He shall not while in office in any way be interested as an owner, operator, agent, stockholder or engineer of any mine. He shall make his residence or have his office in the mining district of the county for which he is appointed. The salary of the inspector of mines shall be such sum as shall be fixed by the board of county commissioners, not exceeding thirty-six hundred dollars per annum, and he shall in addition be allowed actual traveling expenses not to exceed nine hundred dollars in any one year. He shall file with the county auditor an itemized account of his expenses every three months, verified by his affidavit, showing that they have been incurred in the discharge of his official duties. He shall before entering upon the discharge of the duties of his office, take an oath before some person authorized by law to administer oaths that he will support the constitution of the United States and the constitution of the state of Minnesota and that he will faithfully, impartially and to the best of his ability, discharge the duties of his office, and he shall file a certificate of his having done so in the office of the auditor of the county for which he is appointed, and he shall also give bond payable to said board of commissioners in the penal sum of five thousand dollars, with good and sufficient sureties to be approved by the board of county commissioners of the county for which he is appointed, conditioned that he will faithfully discharge the duties of his office, and said bond shall be filed with the county auditor of such county. ('05 c. 166 § 2, amended '11 c. 133 § 1; '21 c. 7 § 1) [3925]

4235. Duties—The duties of the inspector of mines shall be to visit all the working mines of his county at least once in every ninety days and oftener if requested so to do as hereinafter provided, and closely inspect the mines so visited and condemn all such places where he shall find that the employes are in danger from any cause, whether resulting from careless mining or defective machinery or appliances of any nature; he shall compel the erection of a partition between all shafts where hoisting of ore is performed, and where there are ladder ways, where men must ascend or descend going to and from their work. In case the inspector of mines shall find that a place is dangerous from any cause as aforesaid, it shall be his duty immediately to order the men engaged in work at the said place to quit work, and he shall notify the superintendent, agent or person in charge, to secure the place from the existing danger, which said notification or order shall be in writing, and shall clearly define the limits of the dangerous place, and specify the work to be done, or change to be made to render the same secure, ordinary mine risks excepted. It shall also be the duty of the inspector of mines to command the person, persons or

corporation working any mine, or the agent, superintendent, foreman or other person having immediate charge of the working of any mine, to furnish all shafts, open pits, caves and chutes of such mine where danger exists with some secure safeguard at the top of the shaft, open pit, cave or chute so as to guard against accidents by persons falling therein or by material falling down the same, also a covering overhead on all the carriages on which persons ascend or descend up and down the shaft, if in his judgment it shall be practicable and necessary for the purpose of safety. Provided, that when any mine is idle or abandoned it shall be the duty of the inspector of mines to notify the person, persons or corporation owning the land on which any such mine is situated or the agent of such owner or owners, to erect and maintain around all the shafts, caves and open pits of such mine a fence or railing suitable to prevent persons or domestic animals from accidentally falling into said shafts, caves or open pits. Said notice shall be in writing and shall be served upon such owner, owners or agent, personally, or by leaving a copy at the residence of any such owner or agent if they or any of them reside in the county where such mine is situated, and if such owner, owners or agent are not residents of the county such notice may be given by publishing the same in one or more newspapers printed and circulating in said county if there be one, and if no newspaper be published in said county, then in a newspaper published in some adjoining county, for a period of three consecutive weeks. ('05 c. 166 § 3) [3926]

4236. Requiring employes to work after order to quit—Liability of employer—If any person or persons are required to continue work in any place or places in which the inspector of mines has ordered employes to quit work as aforesaid, except to do such work as may have been by him required to be done in order to render such place or places safe, ordinary risks of mining excepted, the person or persons or corporations so requiring employes to work in such place or places shall be liable for all accidents causing injury or death to any employe arising by reason of such place or places not having been repaired or changed as required by said inspector. ('05 c. 166 § 4) [3927]

4237. Powers of inspector—Duties of Owner—Penalty—It shall be lawful for the inspector of mines to enter, examine and inspect any and all mines and machinery belonging thereto at all reasonable times by day or by night, but so as not to obstruct or hinder the necessary workings of such mines, and it shall be the duty of the owner, operator or agent of every such mine upon the request of the inspector of mines to furnish for his inspection all maps, drawings and plans of the mine, together with the plans of all contemplated changes in the manner of working the mine or any part thereof; to furnish him with some suitable person or persons as he may desire to accompany him through the mine or any part thereof, and also to furnish him suitable ladders and other necessary appliances to make a proper inspection and to furnish upon request the inspector of mines with all necessary facilities for such entry, examination and inspection, and if the said owner, operator or agent aforesaid shall refuse to permit such inspection or to furnish the necessary facilities for such entry, examination and inspection and shall continue so to refuse or permit after written request therefor made by the inspector of mines, such refusal or neglect shall be deemed a gross misdemeanor, and, upon conviction therefor, such owner, operator or agent shall be punished by a fine of

not less than one hundred or more than five hundred dollars for each and every offense. ('05 c. 166 § 5) [3928]

4238. Salary and expenses, how paid—Supplies—The salary and expenses of the inspector of mines shall be paid out of the treasury of the county for which he is appointed by vouchers similar to those used by other county officials. The board of county commissioners shall furnish the inspector of mines with the necessary books, stationery and supplies. ('05 c. 166 § 6) [3929]

4239. Demand for inspection—Examination—Whenever twenty or more persons working in any mine or place where mining is done, or the owner, operator or agent of any mine, shall notify the inspector of mines in writing that his services are needed, he shall immediately make an inspection thereof and shall examine as to the necessary precautions and general safety of the mines and see that all the provisions of this act are observed and strictly carried out. ('05 c. 166 § 7) [3930]

4240. Accidents—Duty of manager and inspector—Whenever by reason of any accident in any mine, loss of life or serious personal injury shall occur, it shall be the duty of the manager or superintendent of the mine, and in his absence the person or officer under him in charge of the mine, to give notice thereof forthwith to the inspector of mines, stating the particulars of such accident, and the said inspector shall, if he deems it necessary from the facts reported, go immediately to the scene of such accident and make such suggestions and render such assistance as he may deem necessary in the premises and personally investigate the cause of such accident and take such steps as he may deem necessary for the safety of the employes of such mine and to prevent accidents of a like or similar nature. ('05 c. 166 § 8) [3931]

4241. Duty of owner—Supports, props, etc.—The owner, operators or agent of any mine shall at all times keep a sufficient and suitable supply of timber and logging on hand, when required to be used as supports, props or otherwise in the mining work, so that the workings of such mine may be rendered reasonably safe and secure. ('05 c. 166 § 9) [3932]

4242. Removal of fence, guard, etc.—Penalty—Any workman, employe or other person who shall open, remove or disturb any fence, guard or rail and not close or replace or have the same closed or replaced again around or in front of any shaft, test pit, chute, excavation, cave or land liable to cave, injure or destroy, whereby accident, injury or damage results, either to the mine or those at work therein, or to any other person, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding fifty dollars or imprisonment for not more than sixty days in the county jail for each and every such offense. ('05 c. 166 § 10) [3933]

4243. Annual report of inspector of mines—It shall be the duty of the inspector of mines appointed under this act to make and file no later than March 1st of each year with the auditor of the county for which he is appointed and with the state commissioner of labor a full and complete report of all his acts, proceedings and doing hereunder for each year ending December 31st, stating therein, among other things, the number of visits and inspections made, the number of mines in operation, the number not in operation, the names of the mines, where located, the owners, lessees or managers, the names of the officers, the quantity of ore shipped, the number of men employed, the average

wages for different kinds of work, the number of accidents, fatal or otherwise, the cause of such accidents, and such other information in relation to the subject of mines and mining inspection as he may deem of proper interest and beneficial to the mining interests of the state. Such report shall be included in the biennial report of the state commissioner of labor. The preceding half year for which no report has been rendered, there shall be substituted a report for the entire year and submitted not later than May 1, 1923. ('05 c. 166 § 11, amended '23 c. 41 § 1; '23 c. 62 § 1) [3934]
County authorized to print inspectors' annual report. '19 c. 161.

4244. Violation by owner, etc.—Penalty—Any owner, operator or agent of any mine in this state violating the provisions of this act shall be deemed guilty of a gross misdemeanor, and for each offense upon conviction shall be fined not less than one hundred dollars or more than five hundred dollars. ('05 c. 166 § 12) [3935]

4245. Neglect of inspector—Penalty—Removal—Any inspector of mines appointed hereunder failing to comply with the requirements of this act shall be guilty of a gross misdemeanor, and, upon conviction thereof, shall be fined not less than one hundred or more than one thousand dollars and be dismissed from office, and the said board of commissioners shall remove him from office for neglect of duty, drunkenness, incompetency, malfeasance in office and other good cause. ('05 c. 166 § 13) [3936]

EMPLOYMENT BUREAUS

4246-4248. [Repealed.]

These sections, consisting of R. L. '05, §§ 1825 to 1827, as amended by Laws 1907, c. 368, Laws 1909, c. 424, and Laws 1911, c. 274, G. S. 1913, §§ 3927 to 3939, are repealed by Laws 1925, c. 347, § 17. See § 4254-17, herein.

4249. Free employment bureaus—The department may establish state free employment bureaus in the cities of St. Paul, Minneapolis, Duluth, Winona, and one in the northwestern portion of the state, for the purpose of receiving applications from persons seeking employment, and applications from employers desiring to employ labor. There shall be no fee or compensation charged or received, directly or indirectly, from persons applying for employment, or from those desiring to employ labor through said bureaus. Every application made by an employer or an employe to the free employment bureau shall be void after thirty days from its receipt, unless the same be renewed by the applicant.

The managers of the state free employment offices shall cause to be received and recorded in books kept for that purpose, the names of all persons applying for employment, as well as the addresses of all persons, firms or corporations applying to employ labor, designating opposite the name and address of each applicant the character of employment desired or offered. Such managers shall also perform such other duties pertaining to the work of the state free employment bureau in the collection of labor statistics and in keeping the books and accounts of such bureau as the commissioner may require, and shall report monthly all business transacted by such offices to the commissioner of labor. ('13 c. 518 § 9) [3820]

4250. Duties of employers and other persons—Reports—Preservation of records—On request of the department, and within the time limited therein, every employer of labor, any officer of a labor organization, or any other person from whom the department of

labor shall find it necessary to gather information, shall make a certified report to the department upon blanks furnished by it, of all matters covered by the request. The names of persons or concerns supplying such information shall not be disclosed. Every notice, order or direction given by the department shall be in writing, signed by any officer or inspector of the department, or a person specially designated for the purpose, and be served by him. Papers so served and all records and documents of the department are hereby declared public documents and shall not be destroyed within two years after their return or receipt by the department. ('13 c. 518 § 10) [3821]

4251. Persons aggrieved—Powers of district court, etc.—Within ten days after the service of any order or direction of the department, any person aggrieved may apply to a judge of the district court for an order restraining its enforcement, and upon not more than thirty (30) days' notice a hearing may be had before such court, or before three impartial expert referees appointed by the court, who shall file their report within ten days after the hearing. The court may alter, annul or affirm the order or direction complained of; the decision to be based upon the hearing by the court, or upon the report of the referees. Such decisions shall take the place of the original order. In cases of affirmance, the losing parties shall pay a reasonable compensation to the referees, to be fixed by the court. In cases of decisions rendered adverse to the order of the department of labor, such compensation shall be paid out of the appropriation for the support of the department. ('13 c. 518 § 11) [3822]

An order of the Industrial Commission, revoking an employment agency license pursuant to Laws 1925, c. 347, § 8, cannot be reviewed in the district court under the provisions of G. S. 1923, § 4251. 211+524.

4252. Violation of local ordinances—Whenever the department learns of a violation of a local ordinance for the protection of employes, it shall give written notice thereof to the proper municipal authorities, and take any steps permissible under the ordinance for its enforcement. ('13 c. 518 § 12) [3823]

4253. Giving of information, etc., misdemeanors—Any officer, agent or employe of the department who shall disclose the name of any persons supplying information at the request of the department shall be guilty of a misdemeanor. Any person who, having been duly subpoenaed, shall refuse to attend or testify in any hearing under the direction of said commissioner shall be guilty of a misdemeanor. Any owner or occupant of any factory, mill, work shop, engineering work, store or other place enumerated in section 8 of this act, or agent of such person, who shall refuse to admit thereto any officer, agent or employe of the department seeking entrance in the discharge of his duty, shall be guilty of a misdemeanor. Any person, firm or corporation, or any of its officers or agents, who or which shall refuse to file with the department such reports as are required by it under the provisions of this act shall be guilty of a misdemeanor. ('13 c. 518 § 14, amended '17 c. 14 § 1) [3825]

4254. State to co-operate with federal government and municipalities in conduct of labor bureaus—The commissioner of labor is hereby authorized and empowered to co-operate with the federal government in the establishment and maintenance within the state of Minnesota, of one or more employment bureaus for the purpose of bringing together the man and the job. Said commissioner is also authorized and empowered to co-operate in a similar way, and for the same pur-

pose with a municipality or municipalities, or with the federal government and any municipalities.

Such co-operative employment bureaus, when established, shall be under the joint management of the co-operating parties, and the cost and expense of establishing and of carrying on any such bureau, shall be borne by the co-operating parties, upon an equitable basis to be agreed upon between them. ('17 c. 113 § 1)

EMPLOYMENT AGENCIES.

4254-1. Definitions—The term "Employment Agent" or "Employment Agency" as used in this act means any person, firm, corporation or association in this State engaged for hire or compensation in the business of furnishing persons seeking employment or changing employment, with information or other service enabling or tending to enable such persons to procure employment, by or with employers, other than such employment agent; or furnishing any other person, firm, corporation or association who may be seeking to employ or may be in the market for help of any kind, with information enabling or tending to enable such other person, firm, corporation or association to procure such help.

The term "Employer" as used in this act means any person, firm, corporation or association employing or seeking to enter into an arrangement to employ any person through the medium or service of an employment agent.

The term "Employee" as used in this act means any person, whether employed or unemployed, seeking or entering into any arrangement for employment or change of employment through the medium or service of an employment agent.

The term "Commission" as used in this act means Industrial Commission of the State of Minnesota. ('25, c. 347, § 1)

4254-2. Licenses required — Penalty — No person, firm, corporation or association shall open or carry on an employment agency in the state, unless such person, firm, corporation or association shall first procure a license from the Commission. Any person, firm, corporation or association who shall open or conduct any such agency without first procuring a license, shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$25.00, and not more than \$100.00, or on failure to pay such fine, by imprisonment for a period not to exceed 90 days, or both, at the discretion of the Court. ('25, c. 347, § 2)

4254-3. Applications for license—Granting or rejecting—Every applicant for a license shall file with the Commission a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall, also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and shall be signed by the applicant and sworn to before a Notary Public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the President and Treasurer thereof. If the applicant is a partnership, the application shall

also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. Said application shall also state whether or not said applicant is at the time of making application, or has at any previous time, been engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this State or any other, and if so, when and where. Said application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commission a schedule of the fees or charges to be collected by such employment agent for any services rendered together with all rules or regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commission. It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commission.

Upon the filing of an application as heretofore provided, the Commission shall cause an investigation to be made as to the character of the applicant, or if the applicant is a corporation, of the officers thereof and of the person who is to have general management of the office and as to the location of the offices. The application shall be rejected if the Commission shall find that any of the persons named as applicants in the application are not of good moral character and business integrity, or if there is any good and sufficient reason within the meaning and purpose of this act for rejecting such application. Unless the application shall be rejected for one or more causes specified above, it shall be granted. ('25, c. 347, § 3)

4254-4. Duration of and fees for license—All such licenses shall endure for a period of one year only, and annual fees therefor shall be paid as follows: Every employment agent engaged in placing female persons only in employment shall pay a license fee of \$75.00. Every employment agent engaged in placing male persons only in employment shall pay a license fee of \$100.00. Every employment agent placing both male and female persons shall pay a license fee of \$150.00. Such fees shall be paid into the revenue fund of the state treasury and at the end of each fiscal year, the state auditor shall cause to be paid out of said revenue fund to the city, village or other political subdivision, fifty per cent of the fees so paid and collected from the employment agents or agencies for offices located in such city, village or other political subdivision. ('25, c. 347, § 4)

4254-5. Bonds of applicants for license—Every application for a license shall be accompanied by a bond in the penal sum of \$2,000 with one or more sureties or a duly authorized surety company, to be approved by the Commission and filed in the office of the Secretary of State, and shall be conditioned that the agent will conform to and not violate any of the terms or requirements of this act or violate the covenants of any contract made by such agent in the conduct of said business. Action on this bond may be brought by and prosecuted in the name of any person damaged

by any breach or any condition thereof and successive actions may be maintained thereon. ('25, c. 347, § 5)

4254-6. Form and contents of license—After an application for a license has been granted said license shall be issued to the applicant and shall state the name of the employment agent and if a corporation the names of the officers, if a partnership the names of the partners, the location of the office where the business is to be conducted and the name of the person who is to be charged with the general management of the business. The license shall also be numbered and dated and state whether it is a Class One, Class Two or Class Three license as hereinafter provided. ('25, c. 347, § 6)

4254-7. Duration of license—Renewal—Every license unless previously revoked shall remain in force until one year next after its issue, and every employment agent shall upon payment of the amount of the license fee required and the filing of a new bond, have issued to it a license for the ensuing year, unless the Commission shall refuse to do so for any of the reasons hereinbefore or hereinafter stated. ('25, c. 347, § 7)

4254-8. Suspension or revocation of license—If the Commission shall find that the employment agent has violated any of the provisions of this act, or has acted dishonestly in connection with his business, or has improperly conducted his business, or that any other good and sufficient reason exists within the meaning and purpose of this act, said Commission may suspend or revoke said license, or refuse to grant a new license to the employment agent upon the termination thereof; but in any case no such action shall be taken until a written notice has been sent to said employment agent specifying the charges against him and he has been given a hearing if he requests, and a reasonable opportunity to disprove or explain said charges. ('25, c. 347, § 8)

An order of the Industrial Commission, revoking an employment agency license pursuant to Laws 1925, c. 347, § 8, cannot be reviewed in the district court under the provisions of G. S. 1923, § 4251. 211+824.

4254-9. Transfer of license—Consent to other persons becoming connected with licensee—No license granted under the terms of this act shall be transferable, except with the consent of the Commission. No employment agent shall permit any person not mentioned in the license to become connected with the business as a partner or as an active officer of a licensed corporation unless the consent of the Commission shall first be obtained. Such consent may be withheld for any reason for which an original application for a license might have been rejected, if the person in question had been mentioned therein. If such consent is given, the name or names of the person or persons so becoming connected with the employment agency shall be endorsed upon the license, and if such license is renewed shall be substituted for or added to the name or names of the person or persons originally mentioned therein. ('25, c. 347, § 9)

4254-10. Places of business of licensees—No employment agent shall open, conduct, or maintain an employment agency at any other place than that specified in the license without first obtaining the consent of the Commission. Such consent may be withheld for any reason for which an original application might have been rejected, if such place had been mentioned therein. If such consent is given, it shall be endorsed upon the license, and if such license is renewed such other place shall be substituted for the place originally

named in said license. So long as any employment agent shall continue to act as such under his license, he shall maintain and keep open an office or place of business at the place specified in the license. ('25, c. 347, § 10)

4254-11. Classification of licenses—Licenses granted under the provisions of this act shall be designated as Class One, Class Two or Class Three.

A Class One license shall entitle the holder thereof to engage in a business of serving those seeking employment and those seeking employees as woodsmen, agricultural hands, coachmen, grooms, hostlers, seamstresses, cooks, waiters, waitresses, scrubwomen, laundresses, maids, nurses, except professionals, and all domestics and servants, unskilled workers and general laborers.

A Class Two license shall entitle the holder thereof to engage in the business of serving those seeking employment and those seeking employees in technical (engineering or otherwise) educational, clerical, executive and like pursuits not provided for under either a Class One or a Class Three license.

A Class Three license shall entitle the holder thereof to engage in the business of serving those seeking employment and those seeking employees in circus, vaudeville, theatrical or other entertainments, exhibitions or performances, or allied pursuits.

Nothing in this act shall be construed to prohibit an employment agent holding a Class One license from serving those included under a Class Two license, provided the business is conducted in accordance with the rules and regulations applicable to a Class One license; but under no circumstances shall a licensee be allowed to conduct a theatrical agency under any but a Class Three license.

Any question of classification arising under the provisions of this act shall be determined by the Commission. ('25, c. 347, § 11)

4254-12. Licenses posted—Schedule of charges posted and printed on receipts—Sections of law posted—Reference of applicants for employment to other agencies—(a) Every employment agent licensed under a Class One license shall post in a conspicuous place in every room used for business purposes in the employment office conducted by him and shall have printed on the back of every receipt given, a schedule showing the amount of the service charges to be made to either employes, employers or both. In no case shall the amount collected exceed the schedule of charges so indicated.

(b) Every employment agent licensed under a Class One license shall post in a conspicuous place in every room used for business purposes in the employment office, conducted by him a copy of Sections 12 and 15 of this act to be furnished said employment agent by the Commission.

(c) No employment agent holding a Class One license shall direct any applicant to apply for employment at any place outside of the office of such employment agent without first giving to such applicant in written form the name and address of the employment agent, the name of the applicant, the name and address of the person to whom the applicant is referred, and the kind of employment supposed to be obtainable at such place, provided that nothing herein shall be construed to prohibit an employment agent from directing an applicant by telephone, to apply for employment but such telephone message must be confirmed in writing by the employment agent within 24 hours after the telephone conversation, and a carbon

copy of such confirmation shall be kept on file at the place of business of said employment agent for a period of one year. ('25, c. 347, § 12)

Explanatory note—For sections 12 and 15 see §§ 4254-12, 4254-15, herein.

4254-13. Contracts with applicants for employment

—Every employment agent licensed under a Class Two license shall contract in writing with every applicant for employment for services to be rendered to said applicant by said employment agent, which contract shall contain the date, the name and address of the employment agency, the name of the employment agent, the service charge to be made to the applicant, and the time and method of payments, and, on either the face or back of said contract shall appear the definition of "accept," "method of payment," "temporary position" and "charge for permanent position which proves to be temporary." ('25, c. 347, § 13)

4254-14. Theatrical agencies—Duplicates of applications for engagements—Every employment agent conducting a theatrical agency who shall procure for or offer to an applicant a theatrical engagement shall have executed in duplicate a contract containing the name and address of the applicant, the name and address of the employer, and of the employment agent acting for such employer; the time and duration of such engagement; the amount to be paid to such applicant; character of entertainment to be given or services to be rendered and the name of the person by whom the transportation is to be paid. One of such duplicate contracts shall be delivered to the person engaging the applicant and the other shall be delivered to the applicant. The employment agency procuring the engagement for such applicant shall keep on file or enter in a book provided for that purpose, a copy of such contract. ('25, c. 347, § 14)

4254-15. Rules governing agencies—Penalties—In addition to the foregoing rules governing specific classifications the following rules shall govern each and every employment agent;

(a) Every license, of whatever classification, shall be hung in a conspicuous place in the main office of the employment agency.

(b) No fee shall be solicited or accepted as an application or registration fee by any employment agent for the purpose of being registered as an applicant for employment.

(c) Every employment agent shall give to every person from whom the payment of a service charge is received for services rendered or to be rendered, or assistance given or to be given, a receipt bearing the name and address of the employment agency, the name of the employment agent, the amount of the payment, the date of the payment and for what it is paid. Every receipt to an applicant by an employment agent shall be numbered and bound in duplicate form. Duplicate copy of each receipt shall be kept at least one year.

(d) Every employment agent shall keep a record of all services rendered employers and employees. Said record shall contain the name and address of the employer by whom the services were solicited, the name and address of the employee, kind of position offered by the employer, kind of position accepted by the employee, probable duration of employment, rate of wage or salary to be paid the employee, amount of the employment agent's service charge, dates and amounts of payments, date and amount of refund if any, and for what, and a space for remarks under

which shall be recorded anything of an individual nature to amplify the foregoing report and as information in the event of any question arising concerning the transaction. Such records shall during business hours be open to the inspection of the Commission at the address where said employment agency is conducted, for the purpose of satisfying said Commission that they are being kept in conformity with this rule. Upon written complaint being made the Commission may require of the employment agent against whom the complaint is made, a detailed account under oath in writing of the transaction referred to in the complaint. In the event the Commission has reason to question the detailed report so submitted by the employment agent the Commission shall have authority to demand of the employment agent the production of said records for examination by it or its agent at such place as the Commission may designate.

(e) No employment agent shall send out any applicant for employment without having obtained either orally or in writing a bona fide order, and if no employment of the kind applied for existed at the place to which said applicant was directed, the said employment agent shall refund to said applicant within 48 hours of demand any sums paid by said applicant for transportation in going to and returning from said place, and all fees paid by said applicant. Provided that nothing in this act shall be construed to prevent an employment agent from directing an applicant to an employer where said employer has previously requested that he be accorded interviews with applicants of certain types and qualifications, even though no actual vacancy existed in said employers organization at the time the applicant was so directed; nor shall it prevent an employment agent from attempting to sell the services of an applicant to the employer even though no order has been placed with said employment agent, provided, however, that in any case the applicant is acquainted with the facts when directed to said employer, in which event no employment agent shall be liable to any applicant as provided in this rule.

(f) No employment agent shall, by himself, or by his agent or agents, solicit, persuade or induce any employee to leave any employment in which employment agent or his agents has placed said employee. Nor shall any agent by himself or through any of his agents, persuade or induce or solicit any employer to discharge any employee.

(g) No employment agent shall knowingly cause to be printed or published a false or fraudulent notice or advertisement for help or for obtaining work or employment.

(h) Any employment agent who knowingly procures, entices, aids or abets in procuring, enticing or sending a woman or girl to practice prostitution or to enter as an inmate or a servant, a house of ill fame, or other place resorted to for prostitution, the character of which, upon reasonable inquiry could have been ascertained by said employment agent, shall be deemed guilty of gross misdemeanor and punishable by a fine of not less than \$100, and not more than \$1,000 or on failure to pay such fine by imprisonment for a period not to exceed one year, or both, at the discretion of the Court.

(i) No employment agent shall place or assist in placing any person in unlawful employment.

(j) No employment agent shall fail to state in any advertisement, proposal or contract for employment that there is a strike or lockout at the place of pro-

posed employment, if he has knowledge that such condition exists.

(k) Any person, firm or corporation who shall split, divide, or share, directly or indirectly any fee, charge, or compensation received from any employee with any employer, or person in any way connected with the business thereof, shall be guilty of a gross misdemeanor and shall be punished by a fine of not less than \$100, and not more than \$1,000, or on failure to pay such fine, by imprisonment for a period not to exceed one year, or both at the discretion of the Court. ('25, c. 347, § 15)

4254-16. Partial invalidity of law—The sections and provisions of this act are separable. In case any section or provision of this act shall be held by any Court to be unconstitutional or invalid, such invalidity shall not affect any other section or provision thereof. ('25, c. 347, § 16)

4254-17. Laws repealed—Sections 4246, 4247 and 4248, General Statutes 1923, and all other acts or parts of acts inconsistent with the provisions of this act, are hereby repealed. ('25, c. 347, § 17)

4254-18. Existing licenses—This Act shall take effect and be in force from and after July 1, 1925. Existing licenses unless sooner revoked for cause shall continue in effect until their expiration. ('25, c. 347, § 18)

INJUNCTIONS AND RESTRAINING ORDERS

4255. Labor organizations declared not unlawful—It shall not be unlawful for working men and women to organize themselves into, or carry on labor unions for the purpose of lessening the hours of labor or increasing the wages or bettering the conditions of the members of such organizations, or carrying out their legitimate purposes as freely as they could do if acting singly. ('17 c. 493 § 1)

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4256. When restraining order or injunction is not to be issued—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney. ('17 c. 493 § 2)

4257. Not to be issued to prevent termination of employment—No restraining order or injunction shall prohibit any person or persons, whether singly or in

concert, from terminating any relation of employment or from ceasing to perform any work or labor; or from recommending, advising or persuading others by peaceful means so to do; or from attending at any place where any person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any such person to abstain from working; or from ceasing to patronize any party to such dispute; or from recommending, advising or persuading others by peaceful and lawful means, so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by a single individual; or shall any of the acts specified in this section be considered or held to be illegal or unlawful in any court of the state. ('17 c. 493 § 3)

4258. Labor declared not a commodity or article of commerce—The labor of a human being is not a commodity or article of commerce, and the right to enter into the relation of employer and employe, or to change that relation; or to assume and create a new relation for employer and employe; or to perform and carry on business with any person in any place; or to work and labor as an employe, shall be held and construed to be a personal, and not a property right. In all cases involving the violation of the contract of employment, either by the employe or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted, but the parties shall be left to their remedy at law. ('17 c. 493 § 4)

4259. When no indictment is to be returned—No person shall be indicted, prosecuted or tried in any court of this state for entering into or carrying on any arrangement, agreement or combination between themselves made with a view of lessening the number of hours of labor or increasing wages or bettering the condition of working men, or for any act done in pursuance thereof, unless such act is in itself forbidden by law if done by a single individual. ('17 c. 493 § 5)

4260. Not to curtail the power of the executive department or of the courts under certain conditions—Nothing in this act shall hamper or curtail or in any manner take away the power of the executive department of government, or of the courts where there is threatened any irreparable injury to business or property by reason of violence, threats or other unlawful acts, or where criminal syndicalism, as hereinafter defined, or the acts constituting the same, are involved; and criminal syndicalism is hereby defined to be the doctrine which advocates crime, sabotage, violence or other unlawful methods of terrorism as a means of accomplishing industrial, social or political reform. ('17 c. 493 § 6)

CHAPTER 23A

WORKMEN'S COMPENSATION ACT

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Compensation insurance board and bureau, see §§ 3612 to 3634, herein.

Part 1
COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

4261. Injury or death of employe—When personal injury or death is caused to an employe by accident arising out of and in the course of his employment, of which injury the actual or lawfully imputed negligence of the employer is the natural and proximate cause, he, or, in case of death, his personal representative, for the exclusive benefit of the surviving spouse and next of kin, shall receive compensation by way of damages therefor from his employer, provided the employe was himself not wilfully negligent at the time of receiving such injury; and the question of whether the employe was wilfully negligent shall be one of fact to be submitted to the jury, subject to the usual powers of the court over verdicts rendered contrary to the evidence, or to law. ('21 c. 82 § 1)

See also notes under § 4326.

In General.

139-409, 166+772; 132-249, 156+120; 132-328, 156+669; 134-131, 158+797; 126-286, 148+71; 128-221, 150+623; 128-43, 150+211; 142-356, 172+216; 144-323, 175+610; 145-181, 176+749; 147-413, 180+552; 143-129, 173+405; 144-313, 175+694; 150-507, 185+948; 186+863, 186+860, 190+256; 140-216, 166+185; 140-399, 167+1039; 140-427, 168+130; 140-470, 168+555; 150-2, 188+265; 150-364, 188+286; 151-144, 189+429; 151-428, 860; 152-253, 186+860; 153-151, 189+931.

Injuries in course of employment, 129-176, 151+912; 129-502, 153+119; 138-131, 164+585; 138-210, 164+810; 138-250, 164+916; 140-470, 160+555; 138-326, 164+1012; 134-113, 158+913; 138-312, 164+1020; 141-61, 169+274; 141-166, 169+532; 137-435, 163+755; 144-259, 175+110; 149-1, 182+622; 149-429, 183+828; 150-1, 183+977; 150-521, 185+948; 145-286, 177+131; 147-366, 180+219; 153-225, 190+356; 151-258, 186+946; 152-512, 189+426; 153-479, 190+984; 153-150, 189+931.

4261
 Et seq.
 242nw 405
 242nw 717
 243nw 706
 245nw 630
 247nw 2

4261Etseq
 174m 156
 174m 491
 218nw 54
 218nw 66
 223nw 77
 224nw 450
 4326J

4261Etseq.
 170m 422
 177m 98
 231nw 214
 232nw 621
 233nw 300
 233nw 467

4261
 Et seq.
 174m 359
 170m 373
 179m 395
 181m 417
 182m 282
 218nw 392
 223nw 608
 229nw 340
 232nw 918
 236nw 322
 237nw 610
 238nw 559
 248nw 293
 239nw 614
 See 4290

4261
 170m 158
 180m 400
 228nw 559
 248nw 293
 248nw 824
 250nw 812
 251nw 277
 251nw 284
 251nw 534
 251nw 909
 252nw 453
 252nw 666

166-251, 207+636; 210+622.

Acts necessary to the comfort and convenience of the employee while at work, though strictly personal to himself, and not acts of service, are incidental to the service, and injury sustained in the performance thereof is deemed to have arisen out of the employment 157-290, 196+261.

The Workmen's Compensation Act must be liberally construed. 157-290, 196+261.

Intent of legislature was that employee's recovery should be speedy, certain, and definite. 157-290, 196+261.

A workman afflicted with arterio sclerosis was injured by falling and striking a concrete floor with the back of his head. The Industrial Commission found that death was caused by the accidental injury. Under the evidence, the finding cannot be held to have been the result of speculation and conjecture. 158-491, 198+133.

Finding that accident arose out of and in the course of the employment sustained by evidence. 210+64.

Dependents of employee killed by robbers were entitled to compensation. 210+1003.

Firemen on way to fire. 212+461.

Injury received on way home after special errand compensable. 162-493, 203+442.

Employees.

Teamster held employee. 158-522, 198+134.

Presumption Against Suicide.

The presumption against suicide is a presumption of fact, and a strong one; but it does not control where there is substantial proof, from which rational consideration may reach the conclusion of suicide. 157-33, 195+766.

4262. Certain defenses excluded—In all cases brought under part 1 of this act, it shall not be a defense (a) that the employe was negligent, unless and except it shall also appear that such negligence was wilful; (b) that the injury was caused by the negligence of a fellow employe; (c) that the employe has assumed the risks inherent in, or incidental to the work, or arising out of and in the course of his employment from the failure of the employer to provide and maintain safe premises and suitable appliances, which grounds of defense are hereby abolished except as provided in section 4. ('21 c. 82 § 2)

Section 4 is § 4264, herein.

The Compensation Act is liberally construed to secure to employees the benefits intended, and an employe is not necessarily placed outside the protection of the act by disobeying an order. 210+64.

4263. Defenses—When excluded—If the employer elects not to come under part 2 of this act, he loses the right to interpose the three defenses named in section 2 in any action brought against him for personal injury or death of an employe; provided, that this section shall not be held to apply to any employer of farm labor, whether or not he has elected to accept part 2 of this act. ('21 c. 82 § 3)

4264. Defenses—When available—If the employer becomes subject to part 2 of this act and the employe does not, then the employer may set up such defenses as are available at the time of the passage of this act. ('21 c. 82 § 4)

4265. Death claimed—The provisions of Sections 1, 2, 3 and 4 shall apply to any claim for the death of an employe arising under section 4503 of chapter 84, Revised Laws of Minnesota 1905, and the acts or parts of acts amendatory thereof, concerning death by wrongful act. ('21 c. 82 § 5)

Explanatory note—For R. L. '05, § 4503, see § 3657, herein.

4266. Burden of proof—In all actions at law brought pursuant to part 1 of this act, the burden of proof to establish wilful negligence of the injured employe shall be upon the defendant. ('21 c. 82 § 6)

4267. Legal services and disbursements when lien—Medical services, etc.—No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought under the provisions of this act shall be an enforceable lien against the amount paid as compensation, or be valid or binding in any other respect, unless the same be approved in writing by the judge presiding at the trial, or in case of settlement without trial, by a judge of the district court, or in cases arising under part 2 of this act by the Industrial Commission. Provided, that if notice in writing be given the defendant of such claims for legal services or disbursements, the same shall be a lien against the amount paid as compensation, subject to determination of the amount and approval hereinbefore provided. All sums allowed as liens against such compensation or paid for legal, medical and hospital services and other disbursements arising under part 2 of this act, shall be reported by the employe to the Industrial Commission in writing within ten days after such payment. ('21 c. 82 § 7)

191+742.

The provision authorizing the allowance of actual and necessary "disbursements" to the prevailing party does not include attorney's fees. 211+674.

Part II.

ELECTIVE COMPENSATION

4268. Not applicable to certain employments—This act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer; provided, that part 2 of this act shall apply to farm labor if the employer shall have elected to accept the provisions of such part 2 by posting a written or printed statement of his election and filing a duplicate thereof with the Industrial Commission as provided by section 11 of this act, before the accident occurs to an employe, for which damages or compensation may be claimed, unless the employe shall signify his election, as provided by section 11 of this act, not to accept or be bound by the provisions of this act, in which case said part 2 shall not apply; and, provided further, that either party may terminate his acceptance or election not to accept the provisions of part 2 of this act as provided by section 12 hereof. ('21 c. 82 § 8, amended '23 c. 300 § 1)

Sections 11 and 12 are §§ 4271, 4272, herein 212+461.

128-486, 151+182; 132-328, 156+669; 131-352, 155+103; 126-286, 148+71; 138-103, 164+366; 138-416, 165+268. 151-428, 188+860; 154-498, 191+1009; 192+106.

In a workman's compensation case, it is held the findings that the employee was not a farm laborer, that the employment was not casual, and was in course of the business and occupation of the employer, are not without sufficient support. 161-223, 201+312.

The Compensation Act excludes farm labor from its operation, but provides that it shall apply to such labor if the employer shall have elected to accept the provisions of the act by posting a statement of such election and filing a duplicate thereof with the Industrial Commission. Under this statute, filing a notice without posting it does not bring the employer of such labor within the act. 166-251, 207+636.

To exclude an employe from the benefits of the act, under the provisions that it shall not apply to persons whose employment is casual and not in the usual course of the business of the employer, the employment must be both casual and not in the usual course of such business. 166-251, 207+636.

Persons employed exclusively in caring for the home and serving the members of the family therein are not covered by the Workmen's Compensation Act. 166-339, 208+18.

4268
19 — 363
19 — 532
27 — 190
173m 414
173m 441
174m 594
217nw 376
217nw 491
222nw 525
4280
4268
177m 462
177m 518
225nw 426
225nw 448
4326.
4268
176m 100
177m 503
225nw 428
230nw 124
234nw 452
4326 F&G
4268
Et seq.
35 — 134
185m 70
215nw 138
240nw 464
243nw 706
246nw 542
4268
177m 465
248nw 756
248nw 827
252nw 430
4290
4326 (d)

4263
182m 419
234nw 687
239nw 896

Farm Laborers.

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." 157-357, 196+266.

Casual Employment.

Although he may have been a casual employe, his employment was in the usual course of the employer's business, and his remedy is under the Workmen's Compensation Law. An action at law will not lie. 164-199, 204+641.

The workmen's employment was not casual, but was in the usual course of the performance by the town of its duty to keep its roads in repair. 164-358, 205+258.

Employment, though casual and not otherwise excepted from the operation of the Workmen's Compensation Act, held subject thereto if within the "usual course of the trade, business, * * * or occupation" of the employer. 167-72, 208+421.

A person owning but one small building which he rents out, and having no trade, business, profession, or occupation, does not subject himself to the Workmen's Compensation Act by hiring a workman at an hourly wage to reshingle the building. 212+192.

Violation of Law As Defense.

Violation of law as defense. 213+546.

4269
175m 161
220nw 421
4287
4269
228nw 550
4269
242nw 397
242nw 721
245nw 145
246nw 889
4269
249nw 44
250nw 670
4326 J

4269. Agreement to be subject to provisions of part 2—If both employer and employe shall, by agreement expressed or implied, or otherwise, as herein provided, become subject to part 2 of this act, compensation according to the schedules hereinafter contained shall be paid by every such employer, in every case of personal injury or death of his employe, caused by accident, arising out of and in the course of employment, without regard to the question of negligence, except accidents which are intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. It is hereby made the duty of all such employers to commence payment of compensation at the time and in the manner prescribed by part 2 of this act without the necessity of any agreement or order of the commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employe or dependent to take as compensation an amount less than that prescribed by law shall be valid. ('21 c. 82 § 9)

In General.

129-502, 153+119; 137-30, 162+678; 141-64, 169+254; 141-166, 169+532.

141-348, 170+218; 144-313, 175+694; 145-98, 176+155; 145-286, 171+131.

161-240, 201+305.

The Industrial Commission found that Louis Beci died from injuries arising out of and in the course of his employment. The record does not establish conclusively that his injuries were sustained while in a place of danger in disobedience of orders to leave it. 161-237, 201+313.

Rights of Action by Parents of Injured Minor.

The Workmen's Compensation Act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employe, and for the expenses incurred incident to such injuries. 158-505, 198+294.

If the parent desires to retain the common-law remedy, he may cause an election to be made by the employe not to be bound by part 2 of the act; and, if he fails to cause such election to be made, he accepts the provisions of the statute, and thereby surrenders his right to any other method or form of compensation. 158-505, 198+294.

When the Compensation Act applies it is exclusive of all other remedies. 158-505, 198+294.

Presumption Against Suicide.

The presumption against suicide is a presumption of

fact, and a strong one; but it does not control where there is substantial proof, from which rational consideration may reach the conclusion of suicide. 157-33, 195+766.

4270. Surrender of other rights—Such agreement or the election hereinafter provided for shall be a surrender by the parties thereto of their rights to any other method, form or amount of compensation or determination thereof than as provided in part 2 of this act, and an acceptance of all the provisions of part 2 of this act, and shall bind the employe himself, and for compensation for his death shall bind his personal representative, the surviving spouse and the next of kin, as well as the employer, and those conducting his business during bankruptcy or insolvency, for compensation for death or injury, as provided for by part 2 of this act. ('21 c. 82 § 10)

147-415, 180+552.

158-505, 198+294, note under § 4269; 161-240, 201+305.

An injured employe, who has a common-law action against a third person for negligence, and also has a claim against his employer under the Compensation Act, may pursue both. 163-54, 203+622.

Effect of award of compensation as barring action under Employers' Liability Act (Mason's Code, Title 45, ch. 2). 163-460, 204+552; 163-457, 204+557.

4271. Presumption as to acceptance of provisions of part 2—All contracts of employment made after the taking effect of this act shall be presumed to have been made with reference, and subject to the provisions of part 2, unless otherwise expressly stated in the contract in writing, and a copy of such contract or the portion of the contract containing such provision shall be filed with the Industrial Commission; or unless written or printed notice has been given by either party to the other, as hereinafter provided that he does not accept the provisions of part 2. Every employer and every employe is presumed to have accepted and come under part 2 hereof, unless prior to the accident, he shall have signified his election not to accept or be bound by the provisions of part 2. This election not to accept part 2 shall be by notice as follows:

4271
246nw 542

The employer shall post and keep posted in a conspicuous place in his shop or place of business and such other places as the Industrial Commission may order, a written or printed notice of his election not to be bound by part 2 hereof and file a duplicate therewith to the Industrial Commission.

The employe shall give written or printed notice to the employer of his election not to be bound by part 2, and file a duplicate with affidavit of service attached thereto with the Industrial Commission.

All such notices of election or re-election shall be on forms prescribed by the Industrial Commission and the election shall become effective when the copy of the notice is filed with the Industrial Commission. ('21 c. 82 § 11, amended '23 c. 300 § 2)

127-399, 149+662, 128-158, 150+620; 144-322, 175+610; 150-182, 184+833.

153-505, 198+294, note under § 4269; 166-251, 207+636; 211-327.

Occupational diseases. 161-240, 201+305.

4272. Termination of acceptance or election—Notice—Either party may terminate his acceptance, or his election not to accept the provisions of part 2 by thirty (30) days' written notice to the other, such notice to be given as provided in section 11. A duplicate of such notice with affidavit of service attached thereto shall be filed with the Industrial Commission and the

time shall not begin to run until the notice is so filed. ('21 c. 82 § 12)

Section 11 is § 4271, herein.
211+327.

127-400, 149+662; 148-277, 181+643.

4273. Minors have power to contract, etc.—Minors who are permitted to work by the laws of this state shall, for the purpose of part 2 of this act, have the same power to contract, make election of remedy, make settlements, and receive compensation as adult employes; subject, however, to the power of the Industrial Commission, in its discretion at any time to require the appointment of a guardian to make such settlement and to receive moneys thereunder or under an award. ('21 c. 82 § 13)

The Workmen's Compensation Act destroys the parent's common-law action to recover for loss of services of an injured minor child who is an employee, and for the expenses incurred incident to such injuries.

If the parent desires to retain the common-law remedy, he may cause an election to be made, by the employee not to be bound by part 2 of the act; and, if he fails to cause such election to be made, he accepts the provisions of the statute, and thereby surrenders his right to any other method or form of compensation.

When the Compensation Act applies it is exclusive of all other remedies. 158-505, 198+294.

4274. Schedule of compensation—Following is the schedule of compensation: (a) For injury producing temporary total disability, sixty-six and two-thirds per centum of the daily wage at the time of injury subject to a maximum compensation of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided, that if at the time of injury the employe receives wages of eight (\$8.00) dollars or less per week, then he shall receive the full amount of such wages per week. This compensation shall be paid during the period of such disability; not, however, beyond three hundred (300) weeks, payment to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be sixty-six and two-thirds per centum of the difference between the daily wage of the workman at the time of injury and the wage he is able to earn in his partially disabled condition. This compensation shall be paid during the period of such disability, not, however, beyond three hundred (300) weeks, payment to be made at the intervals when the wage was payable as nearly as may be and subject to the same maximum as stated in clause (a).

(c) For the permanent partial disability from the loss of a member, the compensation during the healing period to be determined by the commission but not exceeding fifteen weeks shall be sixty-six and two-thirds per centum of the difference between the daily wage of the workman at the time of injury and the wages he shall be able to earn, if any, in his partially disabled condition, unless on application to the Industrial Commission, made in the same manner as provided in section 19 for additional medical service, the period is extended by the Commission for not to exceed an additional ten weeks; and thereafter, and in addition thereto, compensation shall be that named in the following schedule:

- (1) For the loss of a thumb, sixty-six and two-thirds per centum of the daily wage at the time of injury during sixty (60) weeks.
- (2) For the loss of a first finger, commonly called index finger, sixty-six and two-thirds per centum of the daily wage at the time of injury during thirty-five (35) weeks.
- (3) For the loss of a second finger, sixty-six and two-thirds per centum of the daily wage at

the time of the injury during thirty (30) weeks.

- (4) For the loss of a third finger, sixty-six and two-thirds per centum of the daily wage at the time of the injury during twenty (20) weeks.
- (5) For the loss of a fourth finger, commonly called the little finger, sixty-six and two-thirds per centum of the daily wage at the time of injury during fifteen (15) weeks.
- (6) The loss of the first phalange of the thumb, or of any finger, shall be considered equal to the loss of one-half of such thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified above for such thumb or finger.
- (7) The loss of one and one-half or more phalanges shall be considered as the loss of the entire finger or thumb; provided, however, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand.
- (8) For the loss of a great toe, sixty-six and two-thirds per centum of the daily wage at the time of injury during thirty (30) weeks.
- (9) For the loss of one of the toes other than a great toe, sixty-six and two-thirds per centum of the daily wage at the time of injury during ten (10) weeks.
- (10) The loss of the first phalange of any toe shall be considered to be equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified above for such toe.
- (11) The loss of one and one-half or more phalanges shall be considered as the loss of the entire toe.
- (12) For the loss of a hand, not including the wrist movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty (150) weeks.
- (13) For the loss of a hand, including the wrist movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and seventy-five (175) weeks.
- (14) For the loss of an arm, sixty-six and two-thirds per centum of the daily wage at the time of injury during two hundred (200) weeks.
- (15) Amputation of the arm below the elbow shall be considered as the loss of a hand including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it shall be considered as the loss of an arm.
- (16) For the loss of a foot, not including the ankle movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and twenty-five (125) weeks.
- (17) For the loss of a foot including ankle movement, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty (150) weeks.
- (18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and seventy-five (175) weeks.

- (19) For the loss of a leg so close to the hip that no effective artificial member can be used, sixty-six and two-thirds per centum of the daily wage at the time of injury during two hundred (200) weeks.
- (20) Amputation of the leg below the knee shall be considered as loss of foot including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member; otherwise it shall be considered as loss of leg.
- (21) For the loss of an eye, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred (100) weeks.
- (22) For complete permanent loss of hearing in one ear, sixty-six and two-thirds per centum of the daily wage at the time of injury during fifty-two (52) weeks.
- (23) For the complete permanent loss of hearing in both ears, sixty-six and two-thirds per centum of the daily wage at the time of injury during one hundred and fifty-six (156) weeks.
- (24) For the loss of an eye and a leg, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and fifty (350) weeks.
- (25) For the loss of an eye and arm, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and fifty (350) weeks.
- (26) For the loss of an eye and a hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred and twenty-five (325) weeks.
- (27) For the loss of an eye and a foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during three hundred (300) weeks.
- (28) For the loss of two arms other than at the shoulder, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (29) For the loss of two hands, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (30) For the loss of two legs, other than so close to the hips that no effective artificial members can be used, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (31) For the loss of two feet, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (32) For the loss of one arm and the other hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (33) For the loss of one hand and one foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (34) For the loss of one leg and the other foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (35) For the loss of one leg and one hand, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (36) For the loss of one arm and one foot, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (37) For the loss of one arm and one leg, sixty-six and two-thirds per centum of the daily wage at the time of injury during four hundred (400) weeks.
- (38) For serious disfigurement not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he was injured or other employment for which the employe is then qualified, sixty-six and two-thirds per centum of the daily wage at the time of injury for such period as the Industrial Commission may determine, not to exceed seventy-five (75) weeks.
- (39) Where, an employe sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which entitles him to the largest amount of compensation; but this section shall not affect liability for serious disfigurement materially affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in sub-section (e) below.
- (40) In all cases of permanent partial disability it shall be considered that the permanent loss of the use of a member shall be equivalent to and draw the same compensation as the loss of that member; but the compensation in and by said schedule provided, shall be in lieu of all other compensation in such cases, except as otherwise provided by this section.
- In the event a workman has been awarded, or is entitled to receive a compensation for loss of use of a member under any workmen's compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under this act, the amount of compensation awarded, or that he is entitled to receive for such loss of use, shall be deducted from the compensation due under the schedules of this Act for the loss of such member. Provided, however, that the amount of compensation due for loss of the member caused by the subsequent accident shall in no case be less than 25% of the compensation payable under the schedules of this act for the loss of such member.
- (41) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member, which the extent of injury to the member bears to its total loss.
- (42) All the compensation provided in clause (c) of this section for loss of members or loss of the use of members are subject to the same limitations as to maximum and minimum as are stated in clause (a).

(43) In addition to the compensation provided in the foregoing schedule for loss or loss of the use of a member, the compensation during the period of retraining for a new occupation as certified by the division of re-education, operating under Chapter 365, Laws of Minnesota 1919, shall be sixty-six and two-thirds per centum of the daily wage at the time of the injury, not exceeding twenty-five (25) weeks, provided the injury is such as to entitle the workman to compensation for at least seventy-five (75) weeks in the schedule of indemnities for permanent impairments and provided the Industrial Commission on application thereto shall find that such retraining is necessary and make an order for such compensation.

Explanatory note—For Laws 1919, c. 365, see §§ 2983 to 2986, herein.

(44) In all other cases of permanent partial disability not above enumerated the compensation shall be sixty-six and two-thirds per centum of the difference between the wage of the workman at the time of the injury and the wage he is able to earn in his partially disabled condition subject to a maximum of twenty (\$20.00) dollars per week. Compensation shall continue during disability, not, however, beyond three hundred (300) weeks.

(d) For permanent total disability as defined in sub-section (e) below, sixty-six and two-thirds per centum of the daily wage at the time of the injury, subject to a maximum compensation of twenty (\$20.00) dollars per week, and a minimum compensation of eight (\$8.00) dollars per week; provided, that if at the time of the injury the employe was receiving wages of eight (\$8.00) dollars or less per week, then he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, but the total amount payable under this sub-section shall not exceed ten thousand (\$10,000) dollars in any case; payments to be made at the intervals when the wage was payable as nearly as may be. Provided, however, that in case an employe who is permanently and totally disabled becomes an inmate of a public institution, then no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support a person or persons named in sub-sections (1), (2) and (3) of section 15 (whose dependency shall be determined as if the employe were deceased); in which case the compensation provided for in said section 15 shall during the period of such employe's confinement, as aforesaid, be paid for the benefit of said persons so dependent during dependency.

(e) The total and permanent loss of the sight of both eyes or the loss of both arms at the shoulder, or the loss of both legs so close to the hips that no effective artificial members can be used, or complete and permanent paralysis, or total and permanent loss of mental faculties, or any other injury which totally incapacitates the employe from working at an occupation which brings him an income, shall constitute total disability.

(f) In case a workman sustains an injury due to accident arising out of and in the course of his employment, and during the period of disability caused thereby, death results proximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of the death. Accrued compensation

due to the deceased prior to death but not paid, shall be payable to such dependent persons, or legal heirs, as the Industrial Commission may order without probate administration. ('21, c. 82, § 14; amended '23, c. 300, § 3; '23, c. 408, § 1; amended as to subsec. c. par. 40 by '25, c. 219; amended as to subsections d and f by '25, c. 161, §§ 1, 2)

Section 15 is § 4275, herein.

In General.

129-92, 151+530; 129-423, 152+838; 129-156, 151+910; 131-27, 154+509; 133-439, 158+700; 136-147, 161+391; 136-448, 162+527; 138-136, 164+581; 143-397, 173+857; 146-284, 178+594, 148-278; 150-95, 184+572; 195+275.

165-390, 206+714.

In this, a proceeding under the Workmen's Compensation Act, it is held as a matter of law that there was an insufficient allowance for medical attendance, and an insufficient award for temporary disability. 162-71, 203+452.

Nature and extent of injury. 165-169, 205+953.

Temporary Total and Permanent Partial Disability.

Where an employe sustained concurrent permanent partial injuries to his left wrist and to a vertebra, and where the combined injuries produce temporary total disability, and permanent partial disability thereafter, he is entitled to compensation under the Workmen's Compensation Act, as follows:

(1) For such total disability, 66-2/3 per cent. of the weekly wage at the time of the injury, during such total disability, not exceeding 300 weeks. 157-456, 196+566.

(2) For the permanent partial loss, 66-2/3 per cent. of the difference between the wage at the time of the injury and the wage he is able to earn in his partial disabled condition, not beyond 300 weeks in all. 157-456, 196+566.

Loss of Eye Already Impaired.

Under the Workmen's Compensation Act, the amount to be paid an employe for an injury to an eye which necessitates its removal is the sum stated in the schedule for the loss of an eye, even though the sight in that eye had been almost wholly destroyed in childhood. 156-405, 195+274.

Compensation for the loss of the use of an eye, does not debar the employe from recovering the full schedule compensation specified in the law for the removal of the same eye, injured in a subsequent employment under a different employer. 161-275, 201+543.

For the removal of a sightless eye, necessitated by an industrial accident, a workman is entitled to receive compensation for the loss of an eye. 161-318, 201+545.

Loss of eye ball after injury to eye. 166-506, 208+188.

Injury to Finger.

The evidence in this proceeding held sufficient to make a question of fact as to the condition of respondent's finger, whether the injury of December 2d was the proximate cause of its condition on and subsequent to January 13, 1925, and whether he was entitled to compensation subsequent to that date, for the triers of such matters to determine from all the evidence in the case. 165-354, 206+433.

Hernia and Recurring Disability.

The evidence sustains the finding of the Industrial Commission of recurring disability from a hernia, and its award of compensation is sustained. 213+32.

"Necessity" for Retraining.

The word "necessary" therein should not be construed as meaning "indispensable," but such compensation should be found necessary if it appears that the retraining sought will materially assist the employe in restoring his impaired capacity to earn a livelihood. 166-139, 207+202.

Permanent Total Disability.

212+20, note under § 4291.

4275. Dependents and allowances—(1) For the purpose of this act, the following described persons shall be conclusively presumed to be wholly dependent: (a) wife, unless it be shown that she was voluntarily living apart from her husband at the time of his injury or death. (b) Minor children under the age of sixteen years.

4275	244nw 807	4275	4275
180m 289	237nw 606	230nw 652	240nw 189
239nw 761			252nw 78
			4326 (B)

(2) Children between sixteen and eighteen years of age, or those over eighteen if physically or mentally incapacitated from earning, shall prima facie, be considered dependent.

(3) Wife, child, husband, mother, father, grandmother, grandfather, grandchild, sister, brother, mother-in-law, father-in-law who were wholly supported by the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his actual dependents, and payment of compensation shall be made to them in the order named.

(4) Any member of a class named in subdivision (3), who regularly derived part of his support from the wages of the deceased workman at the time of his death and for a reasonable period of time immediately prior thereto, shall be considered his partial dependent, and payment of compensation shall be made to such dependents in the order named.

(5) In death cases, compensation payable to dependents shall be computed on the following basis, and shall be paid to the persons entitled thereto, or to a guardian or such other person as the Industrial Commission may direct, for the use and benefit of the person entitled thereto.

(6) If the deceased employe leave a widow and no dependent child, there shall be paid to the widow forty per centum of the daily wage at the time of the injury of the deceased.

(7) If the deceased employe leave a widow or widower and one dependent child, there shall be paid to the widow or widower for the benefit of herself or himself and such child, fifty per centum of the daily wage at the time of injury of the deceased.

(8) If the deceased employe leave a widow or widower and two dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, sixty per centum of the daily wage at the time of injury of the deceased.

(9) If the deceased employe leave a widow or widower and three or more dependent children, there shall be paid to the widow or widower for the benefit of herself or himself and such children, sixty-six and two-thirds per centum of the daily wage at the time of injury of the deceased.

(10) In all cases where compensation is payable to the widow or widower for the benefit of herself or himself and dependent child or children, the Industrial Commission shall have power to determine in its discretion what portion of the compensation shall be applied for the benefit of any such child or children and may order the same paid to a guardian.

(11) In the case of remarriage of a widow without dependent children, she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years compensation. In case of remarriage of a widow who has dependent children, the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the Industrial Commission may order, for the use and benefit of such children, during dependency; provided, that if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years compensation shall be payable in a lump sum to the mother, without deduction for interest. The payments as provided herein shall be paid within

sixty (60) days after written notice to the employer of such remarriage, or that dependency of children has ceased.

(12) If the deceased employe leave a dependent orphan, there shall be paid forty-five per centum of the daily wage at the time of injury of the deceased, with ten per centum additional for each additional orphan with a maximum of sixty-six and two-thirds per centum of such wages.

(13) If the deceased employe leave a dependent husband and no dependent child, there shall be paid to the husband thirty per centum of the daily wage at the time of injury of the deceased.

(14) If the deceased employe leaves no widow or child or husband entitled to any payment hereunder, but leaves both parents wholly dependent on deceased, there shall be paid to such parents jointly forty-five per centum of the weekly wage at the time of the injury of the deceased; provided, that in case of the death of either of the wholly dependent parents the survivor shall receive thirty-five per centum of the weekly wage thereafter. If the deceased employe leaves one parent wholly dependent on said deceased, there shall be paid to such parent thirty-five per centum of the weekly wage at the time of the injury of the deceased; provided, that the compensation payable under this paragraph shall not exceed the actual contributions made by the deceased to the support of such parent or parents, for a reasonable time immediately prior to the injury which caused the death of the said decedent.

(15) If the deceased should leave no widow or child or husband or parent entitled to any payment hereunder, but should leave a grand-parent, grandchild, brother, sister, mother-in-law, or father-in-law wholly dependent on him for support, there shall be paid to such dependent, if but one, thirty per centum of the daily wage at the time of injury of the deceased, or if more than one, thirty-five per centum of the daily wage at the time of injury of the deceased, divided between or among them share and share alike.

(16) If compensation is being paid under part 2 of this act to any dependent, such compensation shall cease upon the death or marriage of such dependent, unless otherwise provided herein.

(17) Partial dependents shall be entitled to receive only that proportion of the benefits provided for actual dependents which the average amount of wages regularly contributed by the deceased to such partial dependent at, and for a reasonable time immediately prior to the injury, bore to the total income of the dependent during the same time.

(18) In all cases where death results to an employe caused by accident arising out of and in the course of employment, the employer shall pay in addition to the expenses provided for in section 19, the expense of burial, not exceeding in amount one hundred and fifty (\$150.00) dollars, except in cases where an insurer of the deceased or a benefit association is liable therefor, or for a part thereof; in which case the employer shall not be required to pay any part of such expense, for which such insurer or a benefit association is liable, unless such non-payment by the employer would diminish the benefits received by the dependents of the deceased from any such insurer or a benefit association. In case any dispute arises as to the reasonable value of the services rendered in connection with the burial, the same shall be determined and approved by the Industrial Commission before payment, after such reasonable notice to interested parties as the Industrial Commission shall require. If

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Sub. Sec.
17, 19-20
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the deceased leave no dependents, no compensation shall be payable except as provided by this subsection or section 16 hereof.

(19) The compensation payable in case of death to persons wholly dependent shall be subject to a maximum compensation of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided that if at the time of injury the employe receives wages of eight (\$8.00) dollars or less per week, then the compensation shall be the full amount of such wages per week. The compensation payable to partial dependents shall be subject to a maximum of twenty (\$20.00) dollars per week and a minimum of eight (\$8.00) dollars per week; provided that if the income loss of the said partial dependents by such death is eight (\$8.00) dollars or less per week; then the dependents shall receive the full amount of their income loss. This compensation shall be paid during dependency, but shall not exceed seventy-five hundred (\$7,500.00) dollars in case of a dependent wife, child, children or orphan, and shall not exceed three hundred (300) weeks in case of any other dependent, payments to be made at the intervals when the wage was payable as nearly as may be.

(20) Actual dependents shall be entitled to take compensation in the order named in Sub-section (3) above, during dependency, until sixty-six and two-thirds per centum of the daily wage of the deceased at the time of injury shall have been exhausted, provided that such compensation shall not exceed seventy-five hundred (\$7,500.00) dollars in case of a dependent wife, child, children or orphan, or continue beyond three hundred (300) weeks in case of any other dependent; but the total compensation to be paid to all actual dependents of a deceased employe shall not exceed in the aggregate twenty (\$20.00) dollars per week. ('21, c. 82, § 15; amended '23, c. 300, § 4; '23, c. 408, §§ 2, 3; amended as to pars. 5, 8, 9, 11, 14 by '25, c. 161, §§ 3 to 7)

128-222, 623; 128-338, 151+123; 131-27, 154+509; 132-249, 156+120; 133-454, 158+509; 134-131, 158+798; 134-324, 159+755; 146-62, 177+934; 133-265, 158+250; 149-4, 182+622, 149-308, 183+839.

165-390, 206+714.

Fireman was paid \$2 for each call and \$1 per hour for time spent at a call over one hour. His employment did not afford employment for any fixed or regular number of days in any one week. Held, compensation was properly determined pursuant to section 13, c. 300. Laws 1923, (4325) and not pursuant to subdivision 19, § 15, c. 82. Laws 1921, (4275). 161-20, 200+927.

Substantial regularity of contribution toward support, under the Compensation Act, is an essential element of partial dependency 212+175.

Remarriage of widow. 209+630.

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229nw 553
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179nw 388
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4276. Injury increasing disability—If an employe receive an injury, which of itself, would only cause permanent partial disability, but which combined with a previous disability does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Provided, however, that in addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employe shall be paid by the state the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the Special Compensation Fund, and created for such purpose in the following manner:

Every employer shall pay to the state treasurer for every case of injury occurring in his employ and causing death in which there are no persons entitled to compensation the sum of two hundred (\$200.00) dol-

lars, which is to be placed into this special compensation fund and to be used to pay the benefits provided by this section. All moneys heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund.

The State Treasurer shall be the custodian of this special fund and the Industrial Commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of this section, and dependency later is shown, the state treasurer is hereby authorized to refund such deposit. ('21 c. 82 § 16, amended '23 c. 300 § 5)

129-156, 151+910; 143-400, 173+857.
209+635, note under § 4326(h).

Loss of Eye After Loss of Use.

Compensation for the loss of the use of an eye, does not debar the employe from recovering the full schedule compensation specified in the law for the removal of the same eye, injured in a subsequent employment under a different employer. 161-275, 201+543.

For the removal of a sightless eye, necessitated by an industrial accident, a workman is entitled to receive compensation for the loss of an eye. 161-318, 201+545.

Loss of eye ball after injury to eye. 166-506, 208+188.

4277. Liability of joint employers—In case any employe for whose injury or death compensation is payable under part 2 of this act shall, at the time of the injury, be employed and paid jointly by two or more employers subject to this act, such employers shall contribute the payment of such compensation in the proportion of their several wage liability to such employe. If one or more but not all of such employers should be subject to part 2 of this act, and otherwise subject to liability for compensation hereunder, then the liability of such of them as are so subject, shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employe; provided, however, that nothing in this section shall prevent any arrangement between such employers for a different distribution, as between themselves, of the ultimate burden of such compensation. ('21 c. 82 § 17)

4278. When compensation begins—In cases of temporary total or temporary partial disability no compensation shall be allowed for the first week after the disability commenced except as provided by section 19, nor in any case unless the employer has actual knowledge of the injury or is notified thereof within the period specified in section 20. Provided, however, that if such disability continues for four weeks or longer, such compensation shall be computed from the commencement of such disability. ('21 c. 82 § 18)

4279. Medical and surgical treatment—The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability for not exceeding ninety (90) days to cure and relieve from the effects of the injury, provided that in case of his inability or refusal seasonably to do so, the employer shall be liable for the reasonable expense incurred by or on behalf of the employe in providing the same; provided further that upon request by the employe made during or after said period of ninety (90) days, the Industrial Commission may require the above treatment, articles and supplies for such further time as the Industrial Commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest within ten days

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15 - 209¹
19 - 354
19 - 359
29 - 243
174m 551
219nw 867
221nw 65
222nw 508
223nw 787
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2279-80
242nw 397¹

from the date of mailing, may demand a hearing and review of such order.

The Commission may at any time upon the request of an employe or employer order a change of physicians and designate a physician suggested by the injured employe or by the Commission itself and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The pecuniary liability of the employer for the treatment, articles and supplies herein required, shall be limited to such charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons. The Industrial Commission may on the basis above stated determine the reasonable value of all such service and supplies and the liability of the employer shall be limited to the amount so determined. ('21 c. 82 § 19, amended '23 c. 300 § 6)

Section 5 is § 4581, herein.

134-16, 158+713; 146-233, 178+503; 148-423, 182+607; 190+984.

167-424, 209+313.

In this, a proceeding under the Workmen's Compensation Act, it is held as a matter of law that there was an insufficient allowance for medical attendance, and an insufficient award for temporary disability. 163-71, 203+452.

The right to medical and hospital treatment, governed by law in force at time of injury. 212+190.

Whether employe who has sustained total permanent disability is entitled to further medical and hospital treatment, when all has been done that can be done to cure or improve the injury, rests in the discretionary power of the commission. 212+190.

An order of the Industrial Commission, providing for an injured employe a change of physicians and hospitalization, is not reviewable by certiorari. 212+415.

4280
19 - 363
173m 414
217nw 491
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252nw 439
4326 (J)

4280. Notice of injury, etc.—Unless the employer shall have actual knowledge of the occurrence of the injury, or unless the injured workman, or a dependent, or someone in behalf of either, shall give notice thereof to the employer in writing, within fourteen (14) days after the occurrence of the injury, then no compensation shall be due until such notice is given or knowledge obtained. If the notice is given, or the knowledge obtained within thirty (30) days from the occurrence of the injury, no want, failure, or inaccuracy of a notice shall be a bar to obtaining compensation, unless the employer shall show that he was prejudiced by such want, defect or inaccuracy, and then only to the extent of such prejudice. If the notice is given, or the knowledge obtained within ninety (90) days, and if the employe, or other beneficiary, shall show that his failure to give prior notice was due to his mistake, inadvertence, ignorance of fact or law, or inability, or to the fraud, misrepresentation or deceit of the employer or his agent, then compensation may be allowed, unless the employer shall show that he was prejudiced by failure to receive such notice, in which case the amount of compensation shall be reduced by such sum, as shall fairly represent the prejudice shown. Unless knowledge be obtained or notice given, within ninety (90) days after the occurrence of the injury, no compensation shall be allowed. ('21 c. 82 § 20)

129-243, 152+838; 131-352, 155+103; 132-251, 156+278; 148-140, 180+1014.

The evidence justified finding that workman failed to give notice of the injury within the time prescribed, because of mistake and ignorance of the law, and that the town was not prejudiced by the delay. 164-358, 205+258.

Rights of alien workmen, or his dependents were lost, by failure to take steps within time limited. 210+47.

4281. Service and form of notice—The notice referred to in section 20 may be served personally upon the employer, or upon any agent of the employer upon whom a summons may be served in a civil action, or by sending it by registered mail to the employer at the last known residence or business place thereof within the state, and shall be substantially in the following form:

NOTICE.

"You are hereby notified that an injury was received by (name).....who was in your employment at (place).....while engaged as (kind of work).....on or about the.....day of19...., and who is now located at (give town, street and number).....that so far as now known, the nature of the injury was.....and that compensation may be claimed therefor.

(Signed)..... (giving address)

Dated 19...."

But no variation from this form shall be material if the notice is sufficient to advise the employer that a certain employe, by name, received a specified injury in the course of his employment on or about a specified time, at or near a certain place specified. ('21 c. 82 § 21)

Section 20 is § 4280, herein.

134-21, 151+715; 150-364, 185+388; 151-423, 186+861; 154-23, 191+277; 193+163.

4282. Limit of actions—The time within which the following acts shall be performed under part 2 of this act shall be limited to the following periods, respectively:

4282
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(1) Actions or proceedings by an injured employe to determine or recover compensation; two years after the employer has made written report of the injury to the Industrial Commission but not to exceed six years from the date of the accident.

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177m 555
225nw 889
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(2) Actions or proceedings by dependents to determine or recover compensation two years after the receipt by the Industrial Commission of notice in writing of death given by the employer but not to exceed six years from the date of the accident; provided that in any such case, if a dependent of the deceased or any one in his behalf shall give notice of such death to the Industrial Commission, said Commission shall forthwith notify in writing the employer of the time and place of such death. In case the deceased was a native of a foreign country, and leaves no known dependent or dependents within the United States, it shall be the duty of the Industrial Commission to give written notice of said death to the consul or other representative of said foreign country forthwith.

(3) In case of physical or mental incapacity, other than minority, of the injured person or his dependents to perform or cause to be performed any act required within the time by this section specified, the period of limitation in any such case shall be extended for two years from the date when such incapacity ceases. ('21 c. 82 § 22, amended '23 c. 300 § 7)

The trial court rightly ordered the dismissal of an action on the showing made, the clerk having mistakenly entered a memorandum indicating that the case was stricken from the calendar, when in fact it was dismissed by the court on the motion of the defendant. 196+486.

Such order, under the circumstances of this case, should not have been entered nunc pro tunc, when the effect of such entry would prevent the plaintiff or the beneficiary of the action from obtaining a reinstatement of the action, so that he might proceed with it as a

compensation proceeding, or substantially embarrass him in so doing, the time for instituting a proceeding under the Compensation Act having expired. 157-396, 196+486.

Rights of alien workmen or dependents were lost where not enforced in time limited, though claim was seized by Alien Property Custodian. 210+47.

4283. Examination and verification of injury—

(1) The injured employe must submit himself to examination by the employer's physician, if requested by the employer, and at reasonable times thereafter upon the employer's request. The employe shall be entitled upon request to have his own physician present at any such examination. Each party shall defray the cost of his own physician.

(2) In case of dispute as to the injury, the Industrial Commission, or in case of a hearing, the commissioner or referee conducting the hearing may, upon its or his own motion, or upon request of any interested party designate a neutral physician of good standing and ability to make an examination of the injured person and report his findings to the Industrial Commission, a commissioner or referee as the case may be. A copy of the signed certificate of such neutral physician shall be mailed to the parties in interest and either party within five days from date of mailing may demand that such physician be produced for purpose of cross-examination. Such signed certificate of a neutral physician shall be competent evidence of the facts stated therein. The expense of such examination shall be paid as ordered by the Commission, commissioner or referee.

(3) If the injured employe refuses to comply with any reasonable request for examination, his right to compensation may be suspended by order of the Commissioner and, in such case, no compensation shall be paid while he continues in such refusal.

(4) In all death claims where the cause of death is obscure or disputed, any interested party may request an autopsy and if denied, the Commission may upon petition order the same; the cost of such autopsy shall be borne by the party demanding the same.

(5) Any physician designated by the Commission, Commissioner or Referee, or whose services are furnished or paid for by the employer, who treats, or who makes or is present at any examination, of an injured employe, may be required to testify as to any knowledge acquired by him in the course of such treatment or examination, relative to the injury or the disability resulting therefrom. ('21 c. 82 § 23, amended '23 c. 300 § 8)

See notes under prior sections.

4284. Compensation to alien dependents—

In case a deceased employe, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the Industrial Commission shall direct payment of all compensation due to the deceased or to his dependents, to be made to the duly accredited consular officer of the country of which the beneficiaries are citizens, if such consular officer resides within the State of Minnesota, or if not, to his designated representative residing within the state, and such consular officer or his representative shall be the sole representative of such deceased employe and of such dependents to settle all claims for compensation and to receive for distribution to the persons entitled thereto, all compensation arising hereunder. The settlement and distribution of said funds shall be made only on order of the Commission. Such consular officer or his representative shall furnish, if required by the commission, a good and sufficient bond, satisfactory to the

commission, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such consular officer or representative shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such consular officer or his representative shall, before receiving the first payment of such compensation, and thereafter, when so ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents with the name, age, residence, extent of dependency and relationship to the deceased of each dependent. ('21 c. 82 § 24)

4285. Payment in lump sum—The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the commission and on such terms and conditions as the commission may prescribe.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a six percent basis. ('21 c. 82 § 25)

146-286, 178+594; 148-333, 181+857; 149-339, 183+837; 187+703. 209+630.

4286. Payment to trustee—At any time after the amount of any award or commutation has been finally determined by the commission, a sum equal to the present value of all future installments of the compensation calculated on a six percent basis may (where death or the nature of the injury renders the amount of future payments certain) by leave of the commission, be paid by the employer to any savings bank or trust company of this state to be approved and designated by the commission, and such sum, together with all interest thereon, shall, thereafter, be held in trust for the employe or the dependents of the employe, who shall have no further recourse against the employer. The payment of such sum by the employer, evidenced by receipt of the trustee, filed with the Industrial Commission, shall operate as a satisfaction of the compensation liability as to the employer. Payments from said fund shall be made by the trustee in the same amounts and at the same time as are herein required of the employer until said fund and interest shall be exhausted, excepting as the Commission shall otherwise order. In the appointment of the trustee, preference shall be given, in the discretion of the Industrial Commission, to the choice of the injured employe or the dependents of the deceased employe, as the case may be. ('21 c. 82 § 26)

134-191, 158+825; 136-148, 161+391.

4287. Compensation preferred claim—Assignment—

Exemption—The right to compensation and all compensation awarded any injured employe or for death claims to his dependents, shall have the same preference against the assets of the employer as other unpaid wages for labor; but such compensation shall not become a lien on the property of third persons by reason of such preference.

Claims for compensation owned by an injured employe or his dependents, shall not be assignable and shall be exempt from seizure or sale for the payment of any debt or liability except as otherwise provided herein. ('21 c. 82 § 27)

4288. Employer to insure employes—Exceptions—

Violations—Penalties—Every employer except the state and the municipal subdivisions thereof, liable under this act to pay compensation shall insure payment

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245nw 619

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241nw 805

4283
242nw 465

4284
29 - 251

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175m 161
220nw 421
223nw 773

4287
231nw 193
4324

4287
176m 464
180m 388

4288-89
173m 354
177nw 353

4288-89
31 - 352

of such compensation with some insurance carrier authorized to insure such liability in this state unless such employer shall be exempted from such insurance by the Industrial Commission; provided that nothing herein contained shall prevent any employer with the approval of the Commission from excluding medical and hospital benefits as required in Section 19; provided, also, that an employer conducting distinct operations or establishments at different locations may either insure or self-insure each separate establishment, or operation and such other portion of his operations, which may be determined by the Industrial Commission to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation, shall make application to the Industrial Commission, showing his financial ability to pay such compensation, whereupon the Commission by written order may make such exemption, as it deems proper. The Commission may, from time to time, require further statement of financial ability of such employer to pay compensation and may upon ten days' notice in writing revoke its order granting such exemption, in which case such employer shall immediately insure his liability. As a condition for the granting of an exemption, the Commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the Commission may, at any time, either before or after the entry of an award, upon at least ten days' notice, and opportunity to be heard, require the surety to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced.

Any employer who shall fail to comply with the provisions of this section to secure payment of compensation shall be liable to the State of Minnesota for a penalty of fifty (\$50.00) dollars; and in addition thereto, if the employer continues his noncompliance, he shall be liable for five (5) times the lawful premium, as determined by the Compensation Insurance Board, for compensation insurance for such employer for the period he fails to comply with such provisions, commencing ten (10) days after notice has been served upon such employer by the Industrial Commission in the manner provided for the service of the summons in civil actions. Such penalties may be covered jointly or separately in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure occurs, to immediately certify the fact thereof to the attorney general and upon receipt of such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury, to be credited to the special compensation fund. ('21 c. 82 § 28, amended '23 c. 282 § 1)

151-428, 186+860.

166-295, 207+634.

A municipality may carry compensation insurance. 163-54, 203+622.

4289. Who may insure—Policies, etc.—Any employer who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall, in every case, be subject to the conditions of this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by an insurance association or corporation formed of employers, or of em-

ployers and workmen, to insure the risks under part 2 of this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death, according to the full benefits of part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for any purpose shall be jurisdiction of the insurer, and that the insurer will, in all things, be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer, and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provision relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided. No agreement by an employe to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risk covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as additional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the Industrial Commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employes the payment of the compensation provided by part 2 of this act in a corporation or association authorized to do business in the state of Minnesota, and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the Industrial Commission, then, and in such case, any proceedings brought by an injured employe or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employer against any such insurance company un-

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248nw 756
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240nw 464
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satisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction proceedings may be brought by the employe against the employer in the first instance, or against such employer and insurance company jointly or severally or in any pending proceedings against any insurance company, the employer may be joined at any time after such adjudication. ('21 c. 82 § 29, amended '23 c. 282 § 2)

4289-1. Insurance rates discriminating against employment of physically handicapped persons—Prohibition against—No person, partnership, association or corporation, or their agents or employes writing workmen's compensation insurance in this state shall make or charge any rate which discriminates against the employment by the insured of any person who is physically handicapped by reason of loss or loss of use of any member due to accident or other cause. ('19, c. 367, § 1)

4289-2. Same—Penalty—Any person, partnership, association or corporation, or their agents or employes, offering a rate of compensation insurance forbidden by section 1 of this act shall be guilty of a misdemeanor. ('19, c. 367, § 2)

4289-3. Same—Cancellation of license—Whenever any company or its agents or employes shall have been convicted of a violation of this act, such fact shall be sufficient cause for the cancellation of its license by the commissioner of insurance. ('19, c. 367, § 3)

4289-4. Licenses to write workmen's compensation insurance—Revocation grounds—The license now or hereafter granted to any insurer to write workmen's compensation insurance in the state of Minnesota shall be revoked by the commissioner of insurance in case it or its agents have been guilty of fraud, misrepresentation, or culpable, persistent and unreasonable delay in making settlements under the provisions of the workmen's compensation act and acts amendatory thereof. Such action may be taken by the commissioner upon his own motion, the recommendation of the commissioner of labor or the complaint of any interested person. A complaint against any such insurer shall be in writing and shall clearly specify the grounds upon which the revocation of the license of such insurer is sought, and such insurer shall have the right to answer the complaint in writing and be heard before the commissioner of insurance in its own behalf, and the method of procedure for the hearing shall be prescribed by said commissioner, who shall set a time and place therefor and shall give all parties interested at least ten days' notice thereof by mail. The commissioner of insurance shall make and file his findings and order and shall send a copy thereof to the commissioner of labor, to the complainant, and to the insurer against whom the charges were made. Within ten days after the service of the findings and order of the commissioner of insurance, revoking the license of any insurer, which service may be made by mail, said insurer may appeal from such order to the district court of the district in which the office of the commissioner is located by serving written notice of appeal upon the commissioner. The commissioner of insurance shall thereupon file with the clerk of such court a certified copy of his findings and order, which shall be prima facie evidence of the facts therein stated. Thereupon the court shall summarily hear and determine the questions involved on said appeal. ('19, c. 508)

4290. Certain persons liable as employers—Contractors—Sub-contractors, etc.—(1) Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer" and be subject to all the liabilities of the employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith nor a contractor, who, in good faith, lets to a subcontractor a portion of his contract. Provided, however, that no person shall be deemed a contractor or subcontractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' directions; nor one who does what is commonly known as "piece work" or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from, or proceedings taken against a person under subdivision 1 of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 31, or under the conditions set forth in Section 66-J. ('21 c. 82 § 30)

128-47. 150+211.

See notes under § 4326, post.

211+327, note under § 4326(g).

Relator, using his own motor truck to make occasional hauls of merchandise for respondents, at a stated price per load, his loading and unloading points being designated by respondents but they having no right to control him otherwise, held to be an "independent contractor" and not an employee, and so not entitled to compensation. 213+49.

4291. Liability of party other than employer—Procedure—(1) Where an injury or death for which compensation is payable under part 2 of this act is caused, under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act, the employe, in case of injury, or his dependents in case of death may, at his or their option, proceed either at law against such party to recover damages, or against the employer for compensation under part 2 of this act, but not against both.

If the employe in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which, and the persons to whom the same are payable, shall be as provided for in part 2 of this act, and not otherwise; provided, that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

If the employe or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employe or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation payable by him to such employe or his dependents here-

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177m 410
177m 570
225nw 391
225nw 004
225nw 911
227nw 47
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178m 313
231nw 233
232nw 114
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181m 232
240nw 890
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under, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

The provisions of Subdivision 1 of this section shall apply only where the employer liable for compensation under part 2 of this act, and the other party or parties legally liable for damages were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and not otherwise.

(2) Where an injury or death for which compensation is payable under part 2 of this act is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party also being subject to the provisions of part 2 of this act but where the provisions of subdivision 1 of this section do not apply or where said party or parties other than the employer are not subject to the provisions of part 2 of this act legal proceedings may be taken by the employee or dependents against such other party or parties to recover damages, notwithstanding the payment by the employer or his liability to pay compensation hereunder, but in such case if the action against such other party or parties is brought by the injured employee, or in case of his death, by his dependents, and a judgment is obtained and paid or settlement is made with such other party either with or without suit, the employer shall be entitled to deduct from the compensation payable by him, the amount actually received by such employee or dependents after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employee or dependents in making such collection or enforcing such liability; provided that in such case action be not diligently prosecuted by the employee or if, for any reason, the Court deem it necessary or advisable in order to protect the interests of the employer, the Court may upon application grant the right to the employer to intervene in any such action for the prosecution thereof, as now provided by law; provided that if the injured employee or in case of his death, his dependent shall agree to receive compensation from the employer or shall institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all of the rights of such employee or dependents and may maintain or, in case an action has already been instituted may continue the action either in the name of the employer or dependents or in his own name, against such other party for the recovery of damages, provided that in such case, if such action be not diligently prosecuted by the employer or if, for any reason, the Court deem it necessary or advisable in order to protect the interest of the employee, the Court may, upon application, grant the right to the employee or his dependents, as the case may be, to intervene in any such action for the prosecution thereof, as now provided by law, but such employer shall nevertheless pay over to the injured employee or dependents all sums collected from such other party or parties by judgment or otherwise in excess of the amount of such compensation payable by the employer under part 2 of this act, and costs, reasonable attorney's fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability provided that in no case shall such party be liable to any person other than the employee or his dependents for any damages growing out of or re-

sulting from such injury or death. ('21 c. 82 § 31, amended '23 c. 279 § 1)

In General.

132-346, 157+506; 136-154, 161+388; 143-131, 173+407; 144-108, 174+727; 144-166, 175+104; 144-315, 175+695; 145-380, 176+174; 148-41, 180+778; 149-340; 183+837, 185+949; 151-436, 186+863; 187+610.

Neither the employer nor his insurer is a necessary party to an action against a third party whose negligence caused the injury or death of the employee. 165-390, 206+714.

Sec. 4291, Gen. St. 1923, does not destroy the right of action enforceable, under the death statute (section 9657, Gen. St. 1923), by the personal representative of a deceased employee whose employer has paid compensation pursuant to the Workmen's Compensation Act. 165-390, 206+714.

Defendant and the contractor were engaged in the accomplishment of related purposes, and plaintiff could not maintain the action. 165-475, 206+937.

Owner of building and the ice company, at the time the employee of ice company was injured, were engaged in the due course of business in the accomplishment of related purposes on the premises within the purview of subdivision 1, and employee's exclusive remedy is under the Workmen's Compensation Act. 210+75.

Where injury for which compensation is payable, is caused by circumstances also creating a legal liability for damages on the part of any party other than the employer, the employee may, at his option, proceed either at law against such party to recover damages or against the employer for compensation, but not against both. If he brings an action for the recovery of damages, the amount thereof and the manner of payment shall be as provided in part 2 of said act. 212+20.

Where an employee pursues the employer for compensation under the mistaken impression that the law afforded him no other remedy or an additional remedy, equity, in the absence of injury to others or of facts creating an estoppel, may relieve him from his apparent election. 212+461.

Subdivision 1.

212+461.

Subdivision 2.

Where the award to the employee is paid by an insurance company, pursuant to a policy held by the city, and the city has paid nothing, it has suffered no damage, is not the real party in interest, and cannot maintain an action against the negligent third party who caused the injury. 163-54, 203+622.

When employee claims and receives compensation from the employer, the common law action passes to the employer by virtue of subrogation. The payment or obligation to pay the award on the part of the employer is a condition precedent to his right to prosecute such action. 163-54, 203+622.

4292. Penalties for unreasonable delay—In any case where any proceeding has been instituted or carried on or any defense interposed by any employer or insurer liable to pay compensation hereunder, which does not present a real controversy but is merely frivolous or for delay, or where there has been any unreasonable or vexatious delay of payment, or neglect or refusal to pay, or intentional underpayment of any compensation due to any employee or dependent under part 2 of this act, the industrial commission or the Supreme Court on appeal may, after reasonable notice and hearing or opportunity to be heard, as in cases of dispute arising under part 2 of this act, award, in addition to the compensation payable or to become payable, an amount equal to not more than twenty-five per centum of the compensation payable or to become payable as aforesaid. To secure information as to any act or omission specified in this section the Industrial Commission, by itself or employes, may examine from time to time the books and records of any employer or insurance carrier, relative to the payment of compensation hereunder, or require any such employer or insurance carrier to furnish any other information relating to the payment of compensation hereunder. In case of an insurer persisting in any act

4292
173m 481
217nw 680

or omission hereinbefore specified in this section, or refusing or failing to allow the Industrial Commission to examine its books and records or to furnish such information, the Industrial Commission shall make complaint in writing to the insurance commissioner, setting forth the facts and recommending the revocation of the license of such insurer to do business in this state, whereupon the commissioner of insurance shall hear and determine the matter as provided in chapter 508 of the General Laws of Minnesota for 1919; and if any such charge is found true, the commissioner of insurance shall revoke the license of such insurer and thereafter it shall be unlawful for such insurer to write or effect insurance in this state. ('21 c. 82 § 32)

Laws 1919, c. 508, referred to in this section is set forth ante, as section 4289-4.

4293
177m 555
225nw 889
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4318-20

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242nw 397
243nw 108

4293. Employers must report accidents—Reports—Duty of physicians—Penalties—It is hereby made the duty of every employer subject to the provisions of part 2 of this act to make or cause to be made a report to the Industrial Commission of any accident to any employe which occurs in the course of his employment, and which causes death or serious injury within forty-eight (48) hours of the occurrence of such accident, and of all other accidents which occur to any employe in the course of his employment, and of which the employer or his foreman has knowledge within seven days after the occurrence of such accident, provided that such injuries are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was sustained, which reports shall be made upon a form to be prescribed by the Industrial Commission.

The Industrial Commission shall include in the form of report prepared by it a statement that the employer will pay the compensation as required by law, to be signed by the employer, or his representative, where a liability to pay compensation is admitted.

Accidents required by this section to be reported within 48 hours may be reported by telephone, telegraph or personal notice and a written report of such accident shall then be made within seven days, or at such time as the Industrial Commission shall designate, and the Commission may require such supplementary reports of any accident as it may deem necessary for the securing of the information required by law, provided that when an accident has been reported which subsequently terminates fatally, a supplemental report shall be filed with the Industrial Commission within forty-eight (48) hours after receipt of knowledge of such death, stating that the injury has proved fatal and any other facts in connection with such death or as to the dependents of such deceased employe which the Industrial Commission may require.

Every physician or surgeon who shall examine, treat or have special knowledge of any injury to any employe compensable under part 2 of this act shall within ten days after receipt of any request therefor, in writing, made by the Industrial Commission, report to the Commission all facts within his knowledge relative to the nature and extent of any such injury and the extent of any disability resulting therefrom, upon a form to be prescribed by the Commission.

It is hereby made the duty of the Industrial Commission from time to time and as often as may be necessary, to keep itself fully informed as to the nature and extent of any injury to any employe compensable

under part 2 of this act and the extent of any disability resulting therefrom and the rights of such employe to compensation, to request in writing and procure from any physician or surgeon examining, treating or having special knowledge of any such injury, a report of the facts within his knowledge relative thereto.

Any employer or physician or surgeon who shall fail to make any report required by this section, in the manner and within the time herein specified, shall be liable to the state of Minnesota for a penalty of fifty (\$50.00) dollars for each such failure and such penalty shall be recovered in a civil action brought in the name of the State by the Attorney General in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure to report occurs, to immediately certify the fact thereof to the Attorney General, and upon receipt of any such certification the Attorney General shall forthwith commence and prosecute such action. All penalties recovered by the State hereunder shall be paid into the state treasury.

No such report nor part thereof, nor any copy of the same or part thereof shall be open to the public, nor shall any of the contents thereof be disclosed in any manner by any official or clerk or other employe or person having access thereto, but the same may be used upon the hearings under this act or for state investigations and for statistics only, and any such disclosure is hereby declared to be a misdemeanor and punishable as such.

Any employer or insurer or injured employees shall, upon request of the Industrial Commission, file with said Commission all medical reports in the possession of such employer or insurer having any bearing upon the case or showing the nature and extent of disability; provided that duly verified copies of such reports may be filed with the Industrial Commission in lieu of the originals. ('21, c. 82, § 33; amended '25, c. 161, § 8, by addition of paragraph)

4294. Duties of commission when employe is injured—On receipt of notice or information that an employe governed by part 2 of this act has sustained an injury which may be compensable, the Industrial Commission shall forthwith mail to such employe, if his postoffice address be known or ascertainable, a written or printed notice in the form of a letter, giving a brief statement in simple language of such employe's general rights and duties under this act. In addition to such other matters as in the discretion of the Commission may be incorporated in this notice, it shall summarize the employer's duty to furnish medical and hospital treatment, and to pay compensation, and shall, also, invite such employe to ask the advice of the Commission in case any doubt or dispute arises concerning his rights under this act on account of such injury. The notice shall be accompanied by an envelope addressed to the Industrial Commission, for use by the employe, in making any reply. ('21 c. 82 § 34)

4295. Employer to notify commission of discontinuance of payments—Before discontinuing the payment of compensation in any case coming under part 2 of this act, the employer shall, if it is claimed by or on behalf of the injured person or his dependents that his right to compensation still continues, or if such employe or his dependents shall refuse to sign or object to signing a final receipt, notify the Industrial Commission, in writing, of such proposed discontinuance of payment, with the date of discontinuance and the reason therefor, and that the employe or depend-

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ent, as the case may be, objects thereto, and such employer shall also file with such notice of discontinuance any medical reports in his possession bearing upon the physical condition of the injured employee at or about the time of the discontinuance of the compensation, or duly verified copies of such reports in lieu of the originals; and until such notice is given, and such reports filed, as aforesaid, the liability for and the making of such payments shall continue unless otherwise ordered by the Commission; provided, that the receipt of any such notice of discontinuance, together with such reports, by the Commission, as herein provided, shall operate as a suspension of payment of compensation until the right thereto can be investigated, heard and determined, as herein provided. It is hereby made the duty of the Industrial Commission forthwith, upon receipt of any such notices of discontinuance, to notify the employee of the receipt thereof and mail him a copy of the same, together with copies of the reports filed with such notice, at his last known place of residence, and to make such investigations and inquiries as may be necessary to ascertain and determine whether the right to compensation in any such case has terminated in accordance with law, and if upon investigation it shall appear that the right to compensation in any such case has not terminated or will not terminate upon the date specified in any such notice of discontinuance, the Industrial Commission shall set down for hearing before the Commission, or some commissioner or referee, the question of the right of the employee, or dependent, as the case may be, to further compensation, such hearing to be held within twenty-five (25) days of the receipt by the Commission of any such notice of discontinuance, and eight (8) days notice of such hearing shall be given by the Commission to the interested parties.

After the hearing by the Commission, commissioner or referee, and due consideration of all the evidence submitted, the Commission, commissioner or referee, shall promptly enter an order or award for such further amount of compensation to be paid by the employer, if any, as may be due and payable. If upon investigation it shall appear that the right to compensation in any such case has terminated, the Commission shall forthwith notify the employer in writing of such fact and the receipt of such notice by the employer shall operate to relieve him and the insurance carrier, as of the date when payment of compensation became suspended as provided by this section, from any further liability for payment of compensation in such case, subject to the right of review provided by this act.

In addition to the filing of the reports required by law, all employers subject to part 2 of this act shall promptly file or cause to be filed with the Industrial Commission all current interim and final receipts for the payments of compensation made, and it is hereby made the duty of the Industrial Commission periodically to check the records of such commission in each case, and require such employers to file or cause to be filed all such receipts for compensation payments as and when due, it being the intention of this section that the Industrial Commission shall definitely supervise and require prompt and full compliance with all provisions for the payment of compensation as required by law. Any insurance carrier insuring any employer in this State against liability imposed by this Act shall be and hereby is authorized and empowered for and on behalf of said employer to perform any and all acts

required of the employer under the provisions of this Act; provided, that the employer shall be responsible for all authorized acts of an insurer in his behalf and for any omission or delay or any failure, refusal or neglect of any such insurer to perform any such act, and nothing herein contained shall be construed to relieve the employer from any penalty or forfeiture provided by this act. ('21, c. 82, § 35; amended as to par. 1, '25, c. 161, § 9)

Explanatory note—The first par. of this section only is amended by Laws 1925, c. 161, § 9.
165-354, 206+433.

4296. Commission may advise—Shall report to legislature—The Industrial Commission may, upon demand of an employer or an employe or his dependent designate one or more of its employes who shall advise such party or parties of his or their rights under this act, and shall assist so far as possible in adjusting the differences between the employe or his dependents and the employer under part 2 hereof and the employe or employes of the Commission so designated are hereby empowered to appear in person before the Commission, Commissioner or referee in any proceeding under part 2 of this act, as the representative or advisor of any such party; and in any such case, such party shall not be required to be also represented by an attorney at law.

The Industrial Commission shall observe in detail the operation of the act throughout the state and shall make report thereof to each session of the legislature, together with such suggestions and recommendations as to changes as it may deem necessary or advisable for the improvement thereof. ('21 c. 82 § 36)

4297. Proceeding begun by petition—All proceedings before the Industrial Commission shall be by petition addressed to the Commission. All petitions shall be in writing and in such form as may be prescribed by the commission, except as otherwise provided by this act. ('21 c. 82 § 37)

4298. Papers filed in main office—All papers to be filed or acted upon by the Industrial Commission shall be delivered to it at its principal office, except as the Commission may otherwise order. ('21 c. 82 § 38)

4299. Papers shall be filed immediately—All papers delivered to the Industrial Commission for filing under the provisions of this act or the rules and regulations of the Commission shall be immediately filed. ('21 c. 82 § 39)

4300. Orders and decisions filed—Every order, decision or award made by any commissioner or referee shall be forthwith filed with the Industrial Commission, and the Commission shall immediately serve or cause to be served upon every party in interest a copy of every order, decision or award made by it or him, together with a notification of the time when the same was filed. ('21 c. 82 § 40)

4301. Service by mail—All papers and notices to which any party shall be entitled under part 2 of this act shall be served by mail, or in such other manner as the Industrial Commission may direct. Any such paper or notice shall be deemed served on the date when mailed, properly stamped and addressed, and shall be presumed to have reached the party to be served; but any party may show by competent evidence that any paper or notice was not received, or that there was an unusual or unreasonable delay in its transmission through the mails. In such case proper allowance shall be made for the party's failure within the prescribed time to assert any right given him by this act. The Industrial Commission, its secre-

tary, and any commissioner or referee, serving or causing to be served any such paper or notice shall keep a careful record of such service. ('21 c. 82 § 41)

4302. Procedure in case of dispute—In cases of dispute as to any question of law or fact in connection with any claim for compensation, either party, or in case of default for a period of at least ten (10) days, in payment of compensation due and payable, the person or persons entitled thereto may present a verified petition to the Industrial Commission setting forth in addition to such other facts as the rules of the Commission may require, the names and residences of the parties and the facts relating to employment at the time of injury, the injury, its extent and character, the amount of wages being received, the knowledge of the employer or notice of the occurrence of said injury, and such other facts as may be necessary and proper for the information of the Commission, and shall state the matter or matters in dispute and the contention of the petitioner with reference thereto. ('21 c. 82 § 42)

4302A. Action where employer is non-resident—Venue—Complaint—Attachment or garnishment—Appearance by employer—At any time after the filing of a petition for compensation, the petitioner, his agent or attorney, may file an affidavit stating that the employer named in said petition is a non-resident or is a foreign corporation, and that the service of said petition and other notices as provided by this act cannot be made on said employer. Thereupon the petitioner may commence an action in the District Court of the county where the employe in respect to whom compensation is claimed resided at the time of injury or death, as the case may be. Such action shall be commenced and proceed in the same manner as is provided by law for actions in the District Court. The complaint in such action shall contain a statement that a petition for compensation in said matter has been filed with the Industrial Commission of Minnesota, together with the affidavit as hereinbefore provided, and a statement of the facts upon which the right to compensation or other relief is based, as provided in this chapter. In any such action the property of defendant may be attached by writ of attachment or proceedings in garnishment, and the summons may be served by publication as provided in other actions in the District Court. Provided, that in the event the employer makes a general appearance in the proceedings upon the petition so filed with the Industrial Commission and shall file therein such bond or security as may be fixed and approved by said commission, or in the event any insurance company authorized to do business in this state shall appear in such proceedings for said employe and assume liability for any award that may be entered in such proceedings against such employer, the proceedings in said District Court shall be dismissed. ('27, c. 417, § 1)

Explanatory note—This section is added to § 4302. of Gen. St. 1923, as subsection 4302a by Laws 1927, c. 417, § 1.

4302B. Same—Determination of issues—Reference—Appeals to Supreme Court—When issue is joined in any such case in the District Court, said court may try and fully determine the same without a jury, or the court may refer the matter to the Industrial Commission of Minnesota, and thereupon the said commission shall proceed to determine the matter as in cases originally commenced before said commission, and said commission shall report its findings and decisions therein to the said District Court, which said findings and decision may be approved or disapproved

by the court in the same manner as is provided by law and the rules of such court for the approval or disapproval of the report of a referee, and shall order judgment which shall be entered accordingly as in other cases. An appeal shall lie from such decision and judgment of the District Court to the Supreme Court as in other cases. ('27, c. 417, § 1)

Explanatory note—This section is added to Gen. St. 1923, § 4302, as subsection 4302B.

4303. Commission to give hearing on claim petition—When a claim-petition or other petition is presented to the Industrial Commission, the Commission shall, by general rules or special order, either direct it to be heard by the Commission or assign it to a commissioner or a referee for hearing: Provided, that petitions to commute further compensation payments shall be heard by the Commission.

The Secretary of the Commission shall within ten days after the same is presented serve upon each adverse party a copy of the petition, together with a notice that the petition will be heard by the Commission or the commissioner or referee to whom it has been assigned (giving his name and address) as the case may be, and if the petition shall be assigned to a commissioner or a referee, shall deliver the original petition to him with copies of the notices served on the adverse parties. ('21 c. 82 § 43)

The Workmen's Compensation Act intended summary and inexpensive relief. 157-122, 202+904.

4304. Rehearing—Any time before an award or disallowance of compensation or order has been made by a commissioner or referee to whom a petition has been assigned, the Commission may order such petition heard before it or may reassign it to another commissioner or referee. Unless the Commission shall otherwise order, the testimony taken before the original commissioner or referee shall be considered as though taken before the Commission or substituted commissioner or referee. ('21 c. 82 § 44)

163-264, 203+963, note under § 4319.

Upon the facts stated in the opinion it is held that whether a claimant shall have a rehearing before the Industrial Commission rests in its discretion. 210+624.

4305. Answer to petition—Within ten days after a copy of any petition has been served on the adverse party, he may file with the Industrial Commission and serve upon the petitioner or his attorney, a verified answer to the petition, which shall admit or deny the substantial averments of the petition and shall state the contention of such adverse party with reference to the matter in dispute as disclosed by the petition. Within five days after the service of the answer, the petitioner may file with the Commission and serve on the adverse party or his attorney, a verified reply, admitting or denying the matter set forth in the answer.

Every fact alleged in a petition not specifically denied by an answer so filed by an adverse party shall be deemed to be admitted by him. But the failure of any adverse party or of all of them to deny a fact so alleged shall not preclude the Commission, commissioner or referee before whom the petition is heard from requiring, of its or his own motion, proof of such fact. ('21 c. 82 § 45)

4306. Commission to fix time and place of hearing—When the reply has been filed or the time in which to file a reply has expired, the commission shall fix a time and place for hearing said petition not less than ten (10) days after the filing of the reply or the expiration of the time within which a reply can be filed. Notice of such hearing shall be given by mailing a copy

4303
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172m 489
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to the interested parties not less than five days before the date fixed for such hearing. Such hearing may be had before the commission, or before a commissioner or referee designated by the secretary by written order, copy of which said written order shall be mailed to the commissioner or referee so designated. All hearings shall be held in the county where the injury occurred unless otherwise ordered by the commission or the commissioner or referee conducting the hearing. The secretary, if the petition has been directed to be heard by the commission, or the commissioner or referee to whom the petition has been assigned, shall serve upon all parties in interest a notice of the time and place of hearing, at least five days prior to such hearing. ('21 c. 82 § 46, amended '23 c. 300 § 9)

4307. Award by default—Upon failure of an adverse party in any case to serve and file an answer as provided by this act, the commission, upon proof of service of the petition and failure to answer being made and filed with the commission, shall forthwith make an award based upon the petition, if the facts stated therein are sufficient to support the same, of such compensation as the claimant is shown thereby to be entitled to; provided, that the commission may require proof of any fact alleged in the petition, and, in such case, the commission shall promptly and summarily hear and determine the matter and promptly make its award. If the petition does not state facts sufficient to support an award, the commission shall promptly notify the petitioner or his attorney of such fact in writing, and another petition may be filed as in the case of an original petition. ('21 c. 82 § 47)

4308. Commission shall administer oaths and issue subpoenas—The Industrial Commission by a member, or the commissioner or referee to whom a cause may be assigned by the commission for hearing, shall administer oaths to all witnesses, and, upon its or his own motion or the written request of any interested party, may issue subpoenas for the attendance of witnesses and the production of such books, papers, records and documents, material in the cause as shall be designated in such request or required by the commission, commissioner or referee. Provided, that the applicants for subpoenas shall advance necessary service and witness fees, which shall be the same as the service and witness fees provided by law for civil causes in the district court; the Industrial Commission shall pay for the attendance of all witnesses subpoenaed by it on its own motion. If any person refuses to comply with any order or subpoena issued by the commission, or by any commissioner or referee in a cause assigned to him by the commission, or if any person refuses to permit an inspection of any place or premises or to produce any books, papers, records or documents, material in the cause, or if any witness refuses to appear or testify regarding that which he may be lawfully interrogated, any judge of the district court in the county in which the cause is pending, on application of the commission, or the commissioner or referee hearing the cause, shall compel obedience by attachment proceedings as for contempt as in the case of disobedience of a similar order or subpoena issued by such court. ('21 c. 82 § 48)

4309. Commission to make award—Who may intervene—The Industrial Commission, if a petition is directed to be heard by it, or the commissioner or referee to whom a petition is assigned for hearing, shall hear all competent evidence produced and shall make, in writing, and as soon as may be after the conclusion of the hearing, such findings of fact, conclusions of law, and award or disallowance of compensation or

other order, as the pleadings and the evidence produced before it or him and the provisions of this act shall, in its or his judgment require. Any person having such an interest in any matter before the commission, a commissioner or referee, that he may either gain or lose by any order or decision relating thereto, shall, upon written application to the commission, commissioner or referee, setting forth the facts which show such interest, be permitted to intervene under such rules and regulations as the commission may prescribe. ('21 c. 82 § 49)

212+813.

On the evidence in this case, reasonable minds might differ as to whether an infection of relator's arm resulted from a compensable injury to his hand received some time before. Hence, the decision of the Industrial Commission awarding compensation will not be disturbed. 160-195, 200+292.

In reviewing proceedings before the Industrial Commission, findings on questions of fact will not be disturbed, unless consideration of the evidence and the inference permissible therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. 210+871.

The evidence in this case examined and held to require an award for hernia. 210+876.

4310. Commission may appoint referee—The Industrial Commission may refer any question of fact arising under any petition, including a petition for commutation of compensation heard by it, to a commissioner or referee to hear evidence and report to the commission the testimony taken before him or such testimony and findings of fact thereon as the commission may order. The commission may refer any question of fact arising under any petition assigned to a commissioner or referee, to another commissioner or referee to hear evidence, and report the testimony so taken thereon to the original commissioner or referee. ('21 c. 82 § 50)

4311. Commission or referee may make investigation—The Industrial Commission, commissioner or referee, if it or he deem it necessary, may, of its or his own motion, either before, during or after any hearing, make an investigation of the facts set forth in the petition or answer. The commission, or a commissioner, or referee, with the consent of the commission, may appoint one or more impartial physicians or surgeons to examine the injuries of the claimant and report thereon, and may employ the services of such other experts as shall appear necessary to ascertain the facts. The report of any physician, surgeon or expert appointed by the commission or by a commissioner or referee shall be filed with the commission and shall be a part of the record and open to inspection as such.

The commission shall fix the compensation of such physicians, surgeons and experts, which when so fixed, shall be paid out of the funds appropriated to the department of labor and industries for the maintenance of the department, and shall be taxed as a part of the costs of the proceedings to be repaid to such department by either party or both, or otherwise, as the commission may direct. If any sum so taxed shall not be paid by the party directed to repay, the same may be collected as costs are now collectible. ('21 c. 82 § 51)

4312. Hearings shall be public—All hearings before the commission, a commissioner or a referee shall be public. ('21 c. 82 § 52)

4313. Commission not bound by rules of evidence—The commission, or a commissioner, or a referee, in making an investigation or conducting a hearing under this act, shall not be bound by common law or statutory rules of evidence or by technical or formal rules of pleading or procedure, except as provided by this

act; and shall make such investigation or inquiry or conduct such hearing in such manner as to ascertain the substantial rights of the parties. But all findings of fact shall be based only upon competent evidence. ('21 c. 82 § 53)

A decision of the Industrial Commission in a workmen's compensation case will not be reversed on a mere matter of procedure. 157-122, 195+784.

The undisputed, unimpeached testimony, not inherently improbable, nor discredited by any facts or circumstances in the case, required a finding that relator suffered an accidental injury, viz a hernia, "arising out of and in the course of his employment." 157-122, 195+784.

The Industrial Commission is not subject to the rules of evidence governing courts, and their decisions will not be disturbed because incompetent evidence may have been admitted. 167-407, 209+26.

The reception of incompetent evidence before the referee of the Industrial Commission will not be considered in this court, when there is sufficient competent evidence in the case to sustain the findings. 209+635.

4314. Depositions—Evidence—Depositions may be taken as now provided by law for civil cases, except as otherwise ordered by the commission, commissioner or referee. The records kept by a hospital of the medical or surgical treatment given to an employe in such hospital shall be admissible as evidence of the medical and surgical matters stated therein, but shall not be conclusive proof of such matters. ('21 c. 82 § 54)

4315. Appeal—Expense—Transcript—Any party in interest may, within twenty days after notice of a commissioner's or referee's award or disallowance of compensation, or other order involving the merits of the case, shall have been served on him, take an appeal to the Industrial Commission on the ground: (1) That the award or disallowance of compensation or other order appealed from is not in conformity with the terms of this act, or that the commissioner or referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation, or other order appealed from was unwarranted by the evidence, or was procured by fraud, coercion or other improper conduct of any party in interest. The commission may, upon cause shown, within thirty days after such notice has been served as aforesaid, extend the time for taking such appeal or for filing of an answer or other pleading.

Any party desiring to appeal to the commission as aforesaid, shall prepare and sign a written notice specifying the award or order appealed from, and that the said appellant appeals therefrom to the Industrial Commission, and specifying the particular finding of fact which appellant claims is unwarranted by the evidence of which appellant claims was procured by fraud, coercion or other improper conduct of any party in interest, or specifying any other ground upon which the appeal is based. The appealing parties shall also serve a copy of such written notice of appeal upon all adverse parties within the time limited for appeal, and file the original thereof with the Industrial Commission with proof of service thereon by admission or affidavit. The appealing parties shall also pay to the Industrial Commission the sum of ten (\$10.00) dollars to be applied on the cost of the transcript of the proceedings appealed from, or so much thereof as may be necessary to present the question raised on such appeal. The appellant shall also be liable for any excess of said ten (\$10.00) dollars in the cost of said transcript and any part of said sum exceeding the actual cost of said transcript shall be refunded to said appellant; provided that the commission may on cause shown direct that a transcript be made without expense to the appellant.

Upon the filing of said notice and the paying of said

appeal fee, the commission shall immediately cause the transcript of testimony and proceedings to be type-written, which said transcript shall be certified as true and correct by the official reporter transcribing the same.

On any such appeal the commission may disregard the findings of fact of the commissioner or referee, and may examine the testimony taken before such commissioner or referee, and if it deem proper, may hear other evidence, and may substitute for the findings of the commissioner or referee such findings of fact as the evidence taken before the commissioner or referee and the commission, as hereinbefore provided, may, in the judgment of the commission, require, and may make such disallowance or award of compensation or other order as the fact so found by it may require. The commission, at its expense, shall cause a complete record of its proceedings to be made and shall provide a stenographer to take the testimony and record of proceedings at the hearings before a referee, commissioner or the commission, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor to be fixed by the commission. ('21 c. 82 § 55, amended '23 c. 300 § 10)

So far as the statute specifies the form of the notice of appeal from the findings of a referee, it is directory rather than mandatory, and, if there is objectionable indefiniteness, it should be remedied by an order rather than punished by dismissal of the appeal. 163-394, 204+161.

The remanding of a proceeding to the Industrial Commission for rehearing on the merits does not require a trial de novo nor the resubmission of the evidence already in. 166-212, 207+499.

4316. Appeal based on error—Whenever an appeal to the commission shall be based upon an alleged error of law, it shall be its duty to grant a hearing thereon. The commission shall fix a time and place for such hearing, and shall give at least five days' notice thereof in writing to all parties in interest. As soon as may be after any such hearing, the commission shall either sustain or reverse the commissioner, or referee's award or disallowance of compensation, or other order appealed from or make such modification thereof as it shall deem proper. ('21 c. 82 § 56)

4317. Appeal based on fraud or insufficiency of evidence—Whenever an appeal shall be taken to the commission on the ground that the commissioner or referee's award or disallowance of compensation was unwarranted by the evidence, or because of fraud, coercion, or other improper conduct by any party in interest, the commission may, in its discretion, grant a hearing de novo before the commission or assign the petition for re-hearing to any commissioner or referee designated by it or sustain the commissioner or referee's award or disallowance of compensation. If the commission shall grant a hearing de novo, it shall fix a time and place for same, and shall give at least five days' notice in writing to all parties in interest. As soon as may be after any hearing de novo by the commission, it shall in writing state its findings of fact and award or disallow compensation in accordance with the provisions of this act. ('21 c. 82 § 57)

4318. Proceedings in case of default in payment of compensation—On at least thirty days' default in the payment of compensation due under any award made under part 2 of this act, the employe or dependents, entitled to such compensation may file a certified copy of such award with the clerk of the district court of any county in the state, and on ten days' notice in writing to the adverse parties served as provided by law for service of a summons, may apply to the judge

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of any district court for judgment thereon. On such hearing the judge of such court shall have the right to determine only the facts of said award and the regularity of the proceedings upon which said award is based, and shall order judgment accordingly; and such judgment shall have the same force and effect, and may be vacated, set aside or satisfied as other judgments of the same court; provided, that no judgment shall be entered on an award while an appeal is pending. There shall be but one fee of 25 cents charged by said clerk for services in each case under this section, and said fee shall cover all services performed by him. ('21 c. 82 § 58, amended '23 c. 300 § 11)

4319. New hearing may be granted—At any time after an award has been made and before the same has been reduced to judgment or writ of certiorari issued by the Supreme Court, the commission may for cause, upon application of either party and not less than five days' notice in writing to all interested parties, set the award aside and grant a new hearing and thereon determine the matter on its merits and make such findings of fact, conclusions of law, and award or disallowance of compensation or other order, as the pleadings and the evidence produced before it and the provisions of this act shall in its judgment require. ('21 c. 82 § 59, amended '21 c. 423 § 1)

The Industrial Commission acted within the discretion conferred upon it by the statute in refusing to grant a rehearing. 163-264, 203+963.

4320. Appeal to Supreme Court—Grounds—Fees—Any party in interest may, within thirty days after the service of notice on him of any award or disallowance of compensation or order involving the merits of the case or any part thereof made by the commission, have the same reviewed on certiorari by the Supreme Court on any of the following grounds: (1) That the award or disallowance of compensation or other order sought to be reviewed is not in conformity with the terms of the act, or that the commission committed any other error of law; (2) that the findings of fact and award or disallowance of compensation or other order sought to be reviewed was unwarranted by the evidence. The Supreme Court may, upon cause shown within said thirty (30) days, extend the time provided in this section for review on certiorari, or for filing any paper required to be filed in such court. To render certiorari effective, the petitioner or relator shall, within thirty days after notice of such final award or disallowance or other order, serve upon the Industrial Commission a writ of certiorari showing that a review is to be had in the Supreme Court of the proceedings of the commission, on which such final award or disallowance of compensation is based, together with a bond with such surety or sureties, and in such amount as the commission or commissioner shall direct and approve, conditioned to pay the cost of such review. The petitioner or relator shall also pay to the secretary of the Industrial Commission \$10.00, to be paid, in turn, by such secretary to the clerk of the Supreme Court as the filing fee provided by Chapter 177 of Laws 1915. On serving of such writ of certiorari and filing bond and the payment of the amount aforesaid, the secretary of the commission shall immediately transmit to such clerk the filing fee aforesaid, together with the return to such writ of certiorari and bond. The receipt by the clerk of such fee and the filing of such return shall vest the Supreme Court with jurisdiction of the matter. Within thirty days from receipt of the amount aforesaid and filing with the commission of the return to writ of certiorari and bond, the secretary shall transmit to the clerk of the

Supreme Court a true and complete return of the proceedings of the commission in the cause sought to be reviewed, or such parts thereof as may be necessary to enable the Supreme Court properly to review the questions presented to it. Such return shall be certified to by the secretary under the seal of the commission, and the petitioner or relator shall pay to the secretary the reasonable expense of preparing the return. On the filing of the return in the Supreme Court, the matter shall be heard and disposed of in accordance with the laws and rules of the court governing civil appeals. The Supreme Court may adopt such rules not inconsistent with the provisions of this act as may be deemed necessary or convenient for the impartial and speedy disposition of such matters. ('21 c. 82 § 60, amended '21 c. 423 § 2; '23 c. 300 § 12)

Explanatory note—For Laws 1915, c. 177, see § 6992, herein.

Determinations of law and fact. 160-185, 199+573.

Certiorari to review a judgment awarding compensation to the relator under the Workmen's Compensation Law. The only questions presented are questions of fact not within the province of this court to determine. 161-153, 201+141.

The commission made no findings in respect to the claim against the Percy Vitlum Company, and the cause is remanded, with directions to make findings upon that claim in accordance with the evidence, and award compensation thereon. 166-295, 207+634.

Certiorari, 166-339, 208+18.

An order of the Industrial Commission, providing for an injured employee a change of physicians and hospitalization, is not reviewable by certiorari. 212+415.

4321. Supreme Court to have original jurisdiction—The Supreme Court, on review taken under the preceding section, shall have and take original jurisdiction and may reverse, affirm or modify the award or order of disallowance reviewed and enter such judgment as may be just and proper; and where necessary, may remand the cause to the Industrial Commission for a new hearing or for further proceedings, with such directions as the court may deem proper. ('21 c. 82 § 61, amended '21 c. 423 § 3)

166-251, 207+636; 167-518, 209+39.

On the evidence in this case, reasonable minds might differ as to whether an infection of relator's arm resulted from a compensable injury to his hand received some time before. Hence, the decision of the Industrial Commission awarding compensation will not be disturbed. 160-195, 200+292.

Findings of fact on conflicting evidence not disturbed. 160-410, 200+475.

The finding of the Industrial Commission on questions of fact is binding upon the Supreme Court. 161-461, 202+30.

Upon conflicting evidence, the findings of the Industrial Commission on question of fact will not be disturbed. 163-498, 204+635.

In reviewing proceedings before the Industrial Commission, findings on questions of fact will not be disturbed, unless consideration of the evidence and the inference permissible therefrom clearly requires reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. 210+871.

Upon a record, in a compensation matter, where the Industrial Commission could find either way on the facts, its determination must control. 212-187.

In this claim under the Workmen's Compensation Act, the finding that the accident to the employee caused no "disablement" was made on conflicting testimony, and cannot be disturbed on appeal. 212+813.

4322. Writ to stay proceedings—A writ perfected under the provisions of this act shall stay all proceedings for the enforcement of collection of the award sought to be reviewed, or any part thereof, until the final disposition of the cause in the Supreme Court or before the Industrial Commission when the cause is remanded for a new hearing or further proceedings. ('21 c. 82 § 62, amended '21 c. 423 § 4)

4323. Attorney general to appear for commission—On all such reviews the attorney general shall, unless otherwise directed by the commission, appear as attorney for the Industrial Commission, and he shall prepare and present to the Supreme Court such papers, briefs and arguments as he shall deem proper and necessary to a fair presentation of the questions involved, in support of the award or order of disallowance sought to be reviewed. ('21 c. 82 § 63, amended '21 c. 423 § 5)

4324. Costs—Reimbursements to prevailing party—**Attorney's fees—Costs on certiorari**—No costs shall be awarded against either party in hearings before the Commission, commissioner or referee, except as especially provided by this act, but in the discretion of the Industrial Commission, commissioner, or referee conducting a hearing, or in the discretion of the Commission in an appeal to it the prevailing party may be awarded reimbursement for actual necessary disbursements, to be taxed and allowed by the Commission, commissioner, or referee on five days' notice in writing to the adverse party. The Commission in affirming, or modifying and affirming, or reversing a disallowance and allowing an award may include in its award reasonable attorney's fees incident to the review on appeal, or may fix and allow a reasonable attorney's fee in such cases in a proceeding to tax disbursements thereon. On writs of certiorari the supreme court costs and disbursements shall be taxed the same as on civil appeals. Provided, that if upon such review by the supreme court any award in favor of the injured employee or his dependents is affirmed, or modified and affirmed, or if the disallowance is reversed, the court may allow reasonable attorney's fees incident to such review, which shall be included as a part of the judgment order of the supreme court. ('21, c. 82, § 64; amended '21, c. 423, § 6; '25, c. 161, § 10)

Attorney's fees in Supreme Court allowed. 161-471, 201-934.

The provision authorizing the allowance of actual and necessary "disbursements" to the prevailing party does not include attorney's fees. 211-674.

4325. Definitions—"Daily Wage" as used in this act shall mean the daily wage of the employe in the employment in which he was engaged at the time of the injury, and if at the time of the injury the employe is working on part time for the day, his daily wage shall be arrived at by dividing the amount received or to be received by him for such part time service for the day by the number of hours of such part time service and multiplying the result by the number of hours of the normal working day for the employment involved. Provided, that in the case of persons performing services for municipal corporations in case of emergency, then the normal working day shall be considered and computed as eight hours, and in cases where such services are performed gratis or without fixed competition the daily wage of the person injured shall, for the purpose of calculating compensation payable under this act, be taken to be the usual going wage paid for similar services in municipalities where such services are performed by paid employes.

The weekly wage shall be arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved; provided that the weekly wage shall not be less than five and one-half times the daily wage. Occasional overtime shall not be considered in computing the weekly wage, but if such over-

time is regular or frequent throughout the year for the employment involved, then it shall be taken into consideration.

Where board or other allowances of any character except gratuities are made to an employe in addition to wages as a part of the wage contract, they shall be deemed a part of his earnings and computed at the value thereof to the employe. ('21, c. 82, § 65; amended '23, c. 300, § 13; '25, c. 175; '27, c. 216)

166-251, 207-636.

Fireman was paid \$2 for each call and \$1 per hour for time spent at a call over one hour. His employment did not afford employment for any fixed or regular number of days in any one week. Held, compensation was properly determined pursuant to section 13, c. 300, Laws 1923, and not pursuant to subdivision 19, § 15, c. 82, Laws 1921. 161-20, 200-927.

4326. Definitions, continued—Throughout this act the following words and phrases as used therein shall be considered to have the following meaning respectively, unless the context shall clearly indicate a different meaning in the connection used:

(a) The word "compensation" has been used both in parts 1 and 2 of this act to indicate the money benefits to be paid on account of injury or death. Strictly speaking, the benefit which an employe may receive by action at law under part 1 of this act is damages, and this is indicated in section 1. To avoid confusion, the word "compensation" has been used in both parts of the act, but it should be understood that under part 1 the compensation by way of damages is determined by an action at law.

(b) "Child" or "children" shall include posthumous children and all other children entitled by law to inherit as children of the deceased, also stepchildren who were members of the family of the deceased at the time of his injury and dependent upon him for support.

(c) The terms "husband" and "widower" are used interchangeably and have the same meaning in this act.

(d) The term "employer" as used herein, shall mean every person not excluded by section 8, who employs another to perform a service for hire and to whom the "employer" directly pays wages, and shall include any person or corporation, co-partnership or association or group thereof, and shall include state, county, village, borough, town, city, school district and other public employers.

(e) The term "physician" shall include "surgeon," and in either case shall mean one authorized by law to practice his profession within one of the United States and in good standing in his profession at the time.

(f) The term "workman" shall include the plural and all ages and both sexes.

(g) The terms "employe" and "workman" are used interchangeably and have the same meaning throughout this act and shall be construed to mean:

(1) Every person in the service of the state, or any county, city, town, village, borough or school district therein, under any appointment or contract of hire, expressed or implied, oral or written, but shall not include any official of the state or of any county, city, town, village, borough or school district therein, who shall have been elected or appointed for a regular term of office or to complete the unexpired portion of any regular term; provided, however, that sheriffs, deputy sheriffs, constables, marshals, policemen and firemen shall be deemed employes within the meaning of this section; provided further, that where in any city operating under a Home Rule Charter, a mode and manner of compensation is provided by said char-

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250nw 73
4274 (a)

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221nw 911
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177m 376
225nw 284
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174m 362
175m 579
219nw 293
229nw 101
230nw 813
4326
179m 272
228nw 931
238nw 676
See 4290
4326
251nw 3
4313

4326R
239nw 673

4326D
240nw 464
See 4290
176m 422
229nw 561
228nw 935
222m 275
223m 772

4326 (d)
248nw 827
4268

4326F
234nw 452
4268

ter which is different from that provided by this act, and the amount of compensation provided by said charter would, if taken thereunder, exceed the amount the employe is entitled to under this act for the same period, he shall, in addition to his compensation under this act, receive under said charter an amount equal to the excess in compensation provided by said charter over what he is entitled to by this act; if the amount of compensation provided by said charter would, if taken thereunder, be equal to or less than the amount of compensation the employe is entitled to under this act for the same period, he shall take only under this act; provided further, that any peace officer other than a sheriff, deputy sheriff, marshal or policeman shall be considered an employe while engaged in the enforcement of peace or in and about the pursuit and capture of any person charged with or suspected of crime.

(2) Every person not excluded by section 8, in service of another under any contract of hire, expressed or implied, oral or written, including aliens, and also including minors who are legally permitted to work under the laws of the state, who, for the purpose of making election of remedy under this act, shall be construed the same, and have the same power of contracting and electing as adult employes.

(h) 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.

(i) "Member" as an anatomy term in this act, shall include eye and ear, as well as leg, foot, toe, hand, finger, thumb and arm.

(j) Without otherwise affecting either the meaning or interpretation of the abridged clause "personal injuries arising out of and in the course of employment." It is hereby declared:

Not to cover workmen except while engaged in, on, or about the premises where their services are being performed, or where their services requires their presence as a part of such service, at the time of the injury, and during the hours of service as such workmen; provided, that where the employer regularly furnishes transportation to his employes to or from the place of employment, such employes shall be held to be subject to this act while being so transported, but shall not include an injury caused by the act of a third person or fellow employe intended to injure the employe because of reasons personal to him, and not directed against him as an employe, or because of his employment.

(k) Wherever in this act the singular is used, the plural shall be included; where the masculine gender is used, the feminine and neuter shall be included.

(1) "Industrial Commission" and "Commission" as used in this act, means the Industrial Commission of Minnesota; and "Commissioner" means a member of that commission.

(m) The term "farm laborers" shall not include the employes of commercial threshermen or of commercial balers. Commercial threshermen and commercial balers are hereby defined to be persons going about from place to place threshing grain, shredding or shelling corn, or baling hay or straw, respectively, as a business; provided, that farmers owning threshing, shredding, shelling or baling machines not engaged in such business generally and doing their own threshing,

shredding, shelling or baling or casually doing such work for other farmers in the same community, and farmers exchanging work among themselves shall not be classed as commercial threshermen or commercial balers. ('21 c. 82 § 66, amended '23 c. 91 § 1; '23 c. 300 § 14)

Subd. (a) 134-21, 158+715; 134-25, 158+717.
 (b) 133-265, 158+250; 132-249, 156+120; 134-131, 158+798; 143-144, 172+897.
 (d) 128-43, 150+211; 133-402, 158+615; 145-185, 176+761; 147-13, 179+216.
 (g1) 134-26, 158+790; 137-24, 162+680; 145-185, 176+751; 148-40, 180+777.
 (g2) 133-109, 157+995; 142-141, 171+302.
 (h) 137-32, 162+679; 138-132, 164+685; 138-211, 164+810; 138-252, 164+916; 140-472, 168+555; 142-423, 172+312; 149-2, 182+622.

In general.

166-251, 207+636; 167-269, 208+802.

An employe who has become afflicted with a disabling ailment, not among those enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. 161-240, 201+305.

The findings that the accident arose out of and in the course of the employment, that the employment was not casual in its nature, and that the employe was not a farm laborer, are supported by the evidence. 163-325, 204+22.

Employer.

211+327, note under § 4326 (g).

The evidence supports the finding and justifies the conclusion that the town board had authorized the work to be done and, in having the road graded over the railroad crossing at the expense of the railroad company, was acting within the scope of its authority. 211+477.

Employee.

165-30, 205+633.

One employed upon a steam dredge in a drainage project is not excluded from the compensation act as coming within the class designated as "farm laborers." 157-357, 195+266.

Employer used elevator without guards as provided by law, and the employe, a minor over 16 years old, was injured thereon. Held, that the language, "minors who are legally permitted to work under the laws of the state" excludes from the act minors whose employment is prohibited by law. 158-495, 198+290.

Teamster held employe. 158-522, 198+134.

The undisputed facts show that the claimant was in the employ of the county at the time of the accident which caused the injuries for which he seeks compensation. 163-309, 204+40.

Upon the facts stated in the opinion, the commission was justified as a matter of law in holding that decedent was not an employe. 163-498, 204+635.

By auditing, allowing, and paying the bill of a workman employed by direction of a member of the board to remove brush growing along the sides of a town road, the board ratified unauthorized employment. 164-358, 205+258.

The evidence in this case compels a finding that the employe received a hernia, being an injury to the physical structure of his body, from an accident arising out of and in the course of his employment. 166-41, 207+183.

The transaction amounted to a substitution of the father for the son; and that he having been killed in an accident arising out of and in course of his employment his dependents were entitled to compensation. 166-186, 207+621.

Respondent held an employe and not an independent contractor. 167-72, 208+421.

There is evidence supporting the finding of the Industrial Commission that the deceased was an employe of the town, hired by the overseer, in virtue of the statute mentioned, under conditions existing which gave him authority to act for the town. 209+910.

An employe who receives compensation for his services in the form of commissions instead of wages is within the scope of the Compensation Act. 210+1004.

Construing a written contract, it is held that relator's husband was not an independent contractor, but an employe or servant of the corporation he served. 210+1004.

A partnership is not a legal entity. The members thereof may become the individual employes of a person who hires them to perform services for him. 210+1004.

A well driller, who was hired to sink a well for the owner of a building under the circumstances related in

the opinion, was not an independent contractor, but an "employee". 211+313.

In gaveling a town road the town board paid the farmer who presented himself with a team and wagon a certain price for each load loaded, hauled and unloaded, the board provided the gravel pit, and supervised the loading of the proper quantity and kind of material, and designated the place of unloading. It is held: The relation thereby created between the town and the hauler was that of employer and "employee." 211+327.

Firemen are within the operation of the Workmen's Compensation Act. 212+461.

Truckman held independent contractor. 213+49.

Accidental injuries.

A sudden and violent rupture or break in the physical structure of the body of an employee, caused by some strain or exertion in the employment of the master, is an "accidental injury" within the meaning of the Workmen's Compensation Act, even though no external unforeseen event, such as slipping, falling, or being struck, contributes thereto. 157-122, 195+784.

An inguinal hernia, the development of which is caused by overexertion or strain, is an "accidental injury" within the Workmen's Compensation Act and is compensable. 161-461, 202+30.

If an unforeseen accident to an employee, while engaged in the performance of his work, directly causes an injury to the physical structure of his body, the injury is compensable under the Workmen's Compensation Act, even though the employee had a natural weakness predisposing him to such an injury. 166-41, 207+183.

The existence of a disease which does not impair the employee's ability to work will not prevent a recovery if an accident accelerates the disease to a degree of disability. 209+635.

An actual aggravation of an existing infirmity caused by accident in the course of employment is compensable, even though the accident would have caused no injury to a normal person. 209+635.

Compensation follows because of the effect of the injuries upon the disease. 209+635.

Whether paresis, primarily caused by syphilis, is lighted up or accelerated by injuries is a question of fact. 209+635.

Injuries arising out of employment.

165-354, 206+433; 165-473, 206+933.

Claimant was employed to act as Santa Claus about and in a store. In his work children pulled at his clothes, and because of that he sought seclusion in a room in the rear of the store, and there removed the mask half from his face and attempted to light and smoke a cigarette. The beard caught fire, injuring his face and hands. Held, that his injuries arose out of and in the course of his employment. 157-290, 196+261.

An employee who suffers injury in a street brawl brought on by himself, and for his own purposes, is not entitled to compensation, even though he was engaged in his employer's business just before the fracas, and intended to resume it immediately afterwards. 157-428, 196+477.

Where the employee enters the premises of the employer on her way to her work and pursues the proper course to the place of her labor, while there in the performance of her duties, and until she leaves the premises by the ordinary means of exit, she is engaged in the ordinary pursuit of her employment, and is entitled to the protection and is subject to the limitations of the Compensation Act. 158-495, 198+290.

An employee necessarily using an elevator on premises of employer is at common law an employee, and not a passenger. 158-495, 198+290.

Such employee using such elevator 20 minutes before time to begin work is there within a reasonable time, and on the premises "during the hours of service." 158-495, 198+290.

Some general characteristics indicated: (1) Employee is "in course of employment" when he does those reasonable things which his contract with his employment expressly or impliedly permits him to do. (2) It "arises out of" the employment when it reasonably appears from all the facts and circumstances that there is a casual connection between the conditions which the employer puts about the employee and the resulting injury. (3) It is employment as a contributing proximate cause and which comes from a hazard to which the employee would have been equally exposed apart from the employment. (4) It need not have been foreseen or expected, but after the event it must appear to have had its origin in a risk connected with the employment, and to have flowed from that source as a rational consequence. 158-495, 198+290.

The word "reasons" as there used refers to the provocation for the assault, and, if the proper work of the employee furnishes the sole provocation for the assault, it is to be considered as directed against him because of his employment. 160-185, 199+573.

Injury from assault by third person was compensable. 160-185, 199+573.

Voluntary fireman held within scope of employment. 161-20, 200+927.

Finding that death caused by shock of accident sustained. 161-471, 201+934.

Whether claimant's disability resulted from the injury or from prior disease was, under the evidence, a question of fact for the Industrial Commission to determine. 161-490, 202+26.

Workman not protected while going to or returning from work. 162-213, 202+485.

Respondent was sent upon a special errand which required his presence out several miles from the office until 10 o'clock at night. He was returning to his home when injured. Held that he was where his duties called him in the course of his employment, and is entitled to compensation. 162-433, 203+442.

There being no evidence contra, there is required a finding that the hernia was due to an accident arising out of and in the course of relator's employment. 163-394, 204+161.

Medical testimony attributed the cancer to the injury. Held, that the evidence justified an award, and that the conclusion of the Industrial Commission was not conjectural. 163-397, 204+323.

Repairing automatic machines. 164-199, 204+641.

Employee on way home not in course of employment. 165-458, 206+717.

A strain to which the relator was subjected in his work was the exciting or immediate cause of a hernia which developed, and he is entitled to compensation under the Workmen's Compensation Act. 166-55, 207+185.

Where employer and employee are residents of this state, and the employer has his business localized in this state, and the employee performs services pertaining to that business under a contract made in this state, he is within the protection of the Compensation Law, although his services may be performed outside the state. 166-149, 207+193.

An employee is not within the act while performing services outside the scope of his employment as a voluntary accommodation to his employer or to others. 166-251, 207+636.

An employer, who directs an employee to perform services for a third party, remains liable under the act for injuries sustained, if the relation of employer and employee continued to exist between them during the performance of such services. 166-251, 207+636.

A police officer, while on duty, went to his home where he kept his weapons to get his revolver. It accidentally fell upon the floor, and was discharged, breaking his leg. Held, that the compensation law applied. 167-407, 209+26.

The evidence establishes that a strain to which the relator was subjected in the course of his work was the immediate or exciting cause of a rupture of the abdominal muscles, and that he is entitled to compensation for the disability resulting therefrom. 167-424, 209+313.

Truck driver returning to place of business. 167-515, 208+645.

There should have been an award, under the Compensation Act, for a hernia resulting to the relator from accidental injury. 209+887.

Injury during lunch hour. 209+898.

Dependents of employee killed by robbers were entitled to compensation. 210+1003.

The finding of the Industrial Commission that a hernia was caused by a workman's attempt to lift a can of garbage is sufficiently supported by competent evidence. 211+8.

To relieve the hernia, a surgical operation was performed. It was followed by an attack of delirium tremens and the death of the workman. The commission sustained a finding of the referee that the "operation did set into activity delirium tremens," and that death was the result of the operation and the subsequent complications. Held, that the finding is supported by the evidence. 211+8.

The undisputed evidence shows that the claimant's disability resulted from an injury sustained in performing the duties of his employment. 211+320.

Injury from accidental discharge of gun carried for employ's own purposes not compensable. 211+330.

An employee with his own team was hauling dirt at a stated price per day or hour, and, as the noon hour approached, with the permission of the employer, he

drove from the place of hauling to his home, about a mile distant, to eat, and to feed his team, and while engaged in unhitching his team he suffered an accidental injury. It is held: The finding that the accident did not arise out of or in the course of his employment cannot be disturbed. 211+579.

Evidence considered, and held sufficient to warrant a finding that decedent's injury was the proximate cause of his death, and warranted the award made. 211+683.

The evidence sustains the finding of the Industrial Commission that the deceased employee, he janitor and caretaker of a church, was killed in the course of his employment, though the work was not that which he was specifically directed to do. 212+173.

Firemen on way to fire. 212+461.

Boarding freight going to working place. 213+546.

Effect of violation of law. 213+546.

4327. Occupational diseases—How regarded—Compensation for—Definitions of—(1) The disablement of an employe resulting from an occupational disease described in sub-section (9) of this section, except where specifically otherwise provided, shall be treated as the happening of an accident within the meaning of Part 2 of this act and the procedure and practice provided in such Part 2 shall apply to all proceedings under this section, except where specifically otherwise provided herein. Whenever used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employe was last employed, and "disablement" means the act of becoming so disabled.

(2) If an employe is disabled or dies and his disability or death is caused by one of the diseases mentioned in sub-section (9) of this section, and the disease is due to the nature of the corresponding employment as described in such sub-section in which such employe was engaged and was contracted therein, he or his dependents shall be entitled to compensation for his death or for the duration of his disability according to the provisions of Part 2 of this act, except as otherwise provided in this section; provided, however, that if it shall be determined that such employe is able to earn wages at another occupation which shall be neither unhealthful nor injurious, and such wages do not equal his full wages prior to the date of his disablement, the compensation payable shall be a percentage of full compensation proportionate to the reduction in his earning capacity.

(3) Neither the employe nor his dependents shall be entitled to compensation for disability or death resulting from disease unless the disease is due to the nature of his employment and contracted therein within the twelve months previous to the date of disablement, whether under one or more employers.

(4) If an employe 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 shall be payable.

(5) The total compensation due shall be recoverable from the employer who last employed the employe in the employment to the nature of which the disease was due and in which it was contracted. If, however, such disease was contracted while such employe was in the employment of a prior employer, the employer who is made liable for the total compensation as provided by this sub-section, may appeal to the commission for an apportionment of such compensation among the several employers who since the contraction of such disease shall have employed such employe in the employment to the nature of which the disease was due. Such apportionment shall be proportioned to the time such employe was employed in the service of such employers, and shall be determined

only after a hearing, notice of the time and place of which shall have been given to every 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 sub-section, it shall make an award accordingly in favor of the last employer, and such award may be enforced in the same manner as an award for compensation.

(6) The employer to whom notice of death or disability is to be given, or against whom claim is to be made by the employer shall be the employer who last employed the employe during the said twelve months in the employment to the nature of which the disease was due and in which it was contracted, and such notice and claim shall be deemed seasonable as against prior employers.

(7) The employe or his dependents, if so requested, shall furnish the last employer or the commission with such information as to the names and addresses of all his other employers during the said twelve months, as he or they may possess; and if such information is not furnished, or is not sufficient to enable such last employer to take proceedings against a prior employer under sub-section (5) of this section, unless it be established that the disease actually was contracted while the employe was in his employment, such last employer shall not be 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 sub-section (5) such last employer shall be liable only for such part of the total compensation as under the particular circumstances the commission may deem just; but a false statement in the information furnished as aforesaid shall not impair the employe's rights unless the last employer is prejudiced thereby.

(8) If the employe, at or immediately before the date of disablement, was employed in any process mentioned in the second column of the schedule of diseases in sub-section (9) of this section, and his disease is the disease in the first column of such schedule set opposite the description of the process, the disease presumptively shall be deemed to have been due to the nature of that employment.

(9) For the purposes of this act only the diseases enumerated in column one, following, shall be deemed to be occupational diseases:

Column 1. Description of Diseases.	Description of Process.
1. Anthrax.	1. Handling of wool, hair, bristles, hides or skins.
2. Lead poisoning or its sequelae.	2. Any process involving the use of lead or its preparations or compounds.
3. Mercury poisoning or its sequelae.	3. Any process involving the use of mercury or its preparations or compounds.
4. Phosphorous poisoning or its sequelae.	4. Any process involving the use of phosphorous or its preparations or compounds.
5. Arsenic poisoning or its sequelae.	5. Any process involving the use of arsenic or its preparations or compounds.

6. Poisoning by wood alcohol.
7. Poisoning by nitro and amido-derivatives of benzene (dinitrobenzol, anilin and others), or its sequelae.
8. Poisoning by carbon bisulphide or its sequelae.
9. Poisoning by nitrous fumes or its sequelae.
10. Poisoning by nickel carbonyl or its sequelae.
11. Dope poisoning (poisoning by tetrachloromethane or any substance used as or in conjunction with a solvent for acetate of cellulose or its sequelae).
12. Poisoning by gonioma kamassi (African boxwood) or its sequelae.
13. Chrome ulceration or its sequelae.
14. Epitheliomatous cancer or ulceration of the skin or of the corneal surface of the eye, due to tar pitch, bitumen, mineral oil or paraffin, or any compound, product or residue of any of these substances.
15. Glanders.
16. Compressed air illness or its sequelae.
17. Ankylostomiasis.
18. Miner's nystagmus.
19. Subcutaneous cellulitis of the hand (beat hand).
20. Subcutaneous cellulitis over the patella (Miner's beat knee).
21. Acute bursitis over the elbow (Miner's beat elbow).
22. Inflammation of the synovial lining of the wrist joint and tendon sheaths.
23. Cataract in glassworkers.
6. Any process involving the use of wood alcohol or any preparation containing wood alcohol.
7. Any process involving the use of a nitro or amido-derivative of benzene or its preparations or compounds.
8. Any process involving the use of carbon bisulphide or its preparations or compounds.
9. Any process in which nitrous fumes are evolved.
10. Any process in which nickel carbonyl gas is evolved.
11. Any process involving the use of any substance used as or in conjunction with a solvent for acetate of cellulose.
12. Any process in the manufacture of articles from gonioma kamassi (African boxwood).
13. Any process involving the use of chromic acid or bichromate of ammonium potassium, or sodium, or their preparations.
14. Handling or use of tar, pitch, bitumen, mineral oil, or paraffin or any compound, product or residue of any of these substances.
15. Care or handling of any equine animal or the carcass of any such animal.
16. Any process carried on in compressed air.
17. Mining.
18. Mining.
19. Mining.
20. Mining.
21. Mining.
22. Mining.
23. Processes in the manufacture of glass involving exposure to the glare of molten glass.

(10) Nothing in this section shall affect the rights of an employe 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 Part 2 of this act.

(11) The provisions of this section shall not apply to disability or death resulting from a disease contracted prior to the date on which this act takes effect. ('21 c. 82 § 67)

An employe who has become afflicted with a disabling ailment, not among those enumerated, through negligence of the employer amounting to the omission of a statutory duty, has an action at law for damages. 161-240, 201+305.

4328. Not retroactive—All rights and liabilities arising on account of accidents or injuries occurring prior to the taking effect of this act shall be governed by the then existing law. ('21 c. 82 § 68)

4329. Invalidity of part not to affect all—In case for any reason any paragraph or any provision of this act shall be questioned in any court of last resort, and shall be held by such court to be unconstitutional or invalid, the same shall not be held to affect any other paragraph or provision of this act, except that parts 1 and 2 are hereby declared to be inseparable, and if either part be declared void or inoperative in an essential part, so that the whole of such part must fail, the other part shall fall with it and not stand alone. Except as otherwise expressly provided, Part 1 of this act shall not apply in cases where part 2 becomes operative in accordance with the provisions thereof, but shall apply in all other cases, and in such cases shall be in extension or modification of the common law. ('21 c. 82 § 69)

161-240, 201+305.

4330. Laws repealed—Chapter 467, General Laws Minnesota for 1913, and all acts amendatory thereof, and all acts and parts of acts inconsistent with this act are hereby repealed; provided, however, that this act shall not be deemed to repeal chapter 359, Laws of Minnesota for 1919, insofar as the same applies to employers not under part 2 of this act. ('21 c. 82 § 70)

GENERAL PROVISIONS.

4331. Workmen's compensation for employes of highway department—The Commissioner of Highways shall report to the Industrial Commission of Minnesota any accident which may occur to any person in the employ of the highway department in the same manner and upon the same conditions as is prescribed in Section 32 of Chapter 82, Laws of 1921, relating to reports of employers, except that such report shall not be required to contain any statement in relation to liability to pay compensation as is required in cases of other employers. ('23 c. 242 § 1)

Explanatory note—For Laws 1921, c. 82, § 83, see § 4293.

4332. Duties and powers of industrial commission—The Industrial Commission of Minnesota shall be vested with the same powers and duties with reference to claims for compensation or other benefits of any employe of the Highway Department as in cases of employes of any other employer, and the same procedure shall be used in determining any such liability as in other cases of liability under the Workmen's Compensation Laws of this State, except as in this Act otherwise provided. ('23 c. 242 § 2)

4333. Same—Report of commission—Upon the filing of any such report, or upon information received by the Industrial Commission of any injury for which liability for compensation from the Highway Depart-

4330
223nw 926
9283

4331
232nw 718
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ment may arise, it shall be the duty of the Industrial Commission to make a preliminary investigation to determine whether there is a probable liability for compensation to such injured person. The Industrial Commission may require the assistance of the Highway Department or any of the employes thereof in making such investigation, and shall be furnished with all facts which may appear in the records of such Highway Department bearing upon facts relating to such employe or such accident or injury. The Industrial Commission shall thereupon make Findings of Fact indicated by such preliminary investigation, and the award or other determination which the Commission may determine should be made with reference to the liability for compensation, and a copy of such Findings of Fact and proposed award or other determination shall be furnished to such injured person, the Commissioner of Highways and the Attorney General by mailing a copy to each thereof. Within ten days after the mailing of such Findings of Fact and proposed award or other determination, or such further time as the Industrial Commission may fix, the injured person, Commissioner of Highways or the Attorney General may file with the Industrial Commission an objection to such proposed award or other determination. If such objection is filed, the Industrial Commission shall reconsider such proposed award or determination and may set aside or correct any such findings, award or other determination made as aforesaid without formal hearing. In the event that an award or other determination cannot be made in conformity with the performance of the Workmen's Compensation Law and the approval of the injured person or other persons filing such objections, without formal hearing as aforesaid, the said matter shall be set down for a formal hearing and determination by the Commission as in other contested cases. If no such objections are filed as provided herein, such proposed Findings and Award or other determination that the Commission may make upon such preliminary investigation or reconsideration aforesaid, shall be final, subject to the right of the Commission to reopen or modify as provided in the Compensation Laws with reference to other awards or determinations of compensation claims. ('23 c. 242 § 3)

4334. Rate of compensation—All compensation or other benefits due to employes of the Highway Department as the same may be determined by the Industrial Commission shall be paid pursuant to the Workmen's Compensation Laws of this state and the award or determination that the Industrial Commission may make, out of the part of the trunk highway fund apportioned to the department in which the employe was engaged at the time of the accident. Provided also that the same receipts for payment of compensation and reports as are required to be filed with the Industrial Commission showing payment of compensation in other cases shall be taken for such payments by the Highway Department and filed with the Industrial Commission. ('23 c. 242 § 4)

4334-1. Injuries prior to June 1, 1921—That the powers and duties vested in the Industrial Commission of Minnesota by this act shall apply to injuries to any employe of the Highway Department which arose out of and in the course of his employment since and including June 1, 1921, and which have not been settled and paid by specific appropriation of the Legislature of the State of Minnesota; provided, that all claims based on injuries resulting from accident, that occurred prior to April 12, 1923, shall be forever barred unless proceedings for the enforcement thereof are

commenced prior to January 1, 1926, and any award of the Industrial Commission for such claims shall be paid out of the Trunk Highway Fund, as other awards are paid. ('23, c. 242, § 5; amended '25, c. 26; '25, c. 121)

4335. Compensation for injury preferred claim in certain cases—That whenever compensation has heretofore been awarded, or shall hereafter be awarded against any county, city, town, village or school district by any court or commission, having jurisdiction, to any injured employe, or to the dependents of any deceased employe, under the provisions of any workmen's compensation law of this state, such compensation shall be a preferred claim against such county, city, town, village or school district and it shall be the duty of the proper officers of any such county, city, town, village or school district to pay any such claim for workmen's compensation at such times and in such amounts as shall be ordered by the court or commission, out of the general fund of such county, city, town, village or school district, and from the current tax apportionment received by any such employer for the credit of said fund. ('21 c. 26 § 1)

4336. Warrants are preferred claims—That in any and all cases where the orders or warrants of such county, city, town, village or school district, have heretofore been issued, or shall hereafter be issued, in payment of any such compensation, and shall remain unpaid all such orders or warrants shall be preferred claims and shall be paid out of said fund, from current tax apportionments received for the credit of said fund, in preference to any other claims for compensation arising under said law subsequent to the issuing of any such orders or warrants by said employer. ('21 c. 26 § 2)

4337. Act construed liberally—This act shall be liberally construed in order to effect the prompt payment of claims for workmen's compensation against any county, city, town, village or school district by any injured employe, or the dependents of any deceased employe of such county, city, town, village or school district. ('21 c. 26 § 3)

4337-1. State employees—Application of workmen's compensation act—Employees of highway department excepted—This act shall apply to all employees of the State of Minnesota employed in any department thereof, except the highway department, whose employes are already provided for by Chapter 242 Laws of 1923, and wherever in this act the terms "heads of departments" or "employees of the State of Minnesota" are mentioned it is understood that said highway department and the employees thereof are excepted and nothing in this act shall be construed as modifying, amending or repealing Chapter 242, General Laws of 1923. ('27, c. 436, § 1)

Explanatory note—For Laws 1923, c. 242, see §§ 4331 to 4334-1, herein.

4337-2. Same—Reports by heads of state Departments to Industrial Commission—The head of every department of the State of Minnesota shall report to the Industrial Commission of Minnesota any accident which may occur to any person in the employment of the State of Minnesota in such department in the same manner and upon the same conditions as prescribed in Section 32, Chapter 82, Laws of 1921, relating to reports of employers, except that such report need not contain any statement in relation to liability to pay compensation. ('27, c. 436, § 2)

Explanatory note—For Laws 1921, c. 82, § 32, see § 4292, herein.

4334Etseq.
23 — 269
229nw 560
5416

4337-5
229nw 560

4337
Et seq.
27 — 436
33 — 161

4337-3. Same—Powers of Industrial Commission as to claims by state employees—The Industrial Commission of Minnesota is hereby vested with the same powers and duties with reference to claims for compensation or other benefits to employees of the State as in the case of employees of other employers, and the same procedure shall govern in determining the liability of the State for compensation to employees of the State as in other cases of liability under the Workmen's Compensation Laws of this State, except as herein otherwise provided. ('27, c. 436, § 3)

4337-4. Same — Procedure — Findings — Awards—Upon the filing of any such report or upon information received by the Industrial Commission of any injuries for which liability for compensation from the State may arise, it shall be the duty of the Industrial Commission to make a preliminary investigation to determine whether there is a probable liability for compensation by the State to such injured employee. The Industrial Commission may require the assistance of the head of any State department or any other employees of the State in making such investigation and shall be furnished with all facts which may appear in the records of any State department bearing upon the question of accident or injury to any such employees. The Industrial Commission shall thereupon make findings of fact as determined by such preliminary investigation and the award or other determination which the Commission may determine should be made with reference to the liability of the State for compensation, and a copy of such findings of fact and proposed award or determination shall be furnished to such injured person, the head of the department in which he is an employee, and the Attorney General, by mailing a copy thereof to each such official. Within ten (10) days after the mailing of such findings of fact, proposed award or other determination, or such further time as the Industrial Commission may fix, the injured person, head of said department, and Attorney General may file with the Industrial Commission an

objection to such proposed award or determination. After such objection is filed the Industrial Commission shall reconsider such proposed award or determination and may set aside or correct any such findings, award or other determination without formal hearing. In the event that an award or other determination cannot be made in conformity with the provisions of the Workmen's Compensation Law and the approval of the injured person or other persons filing such objections without formal hearing as aforesaid, the matter shall be set down for a formal hearing and determination by the Commission as in other contested cases. If no such objections are filed, as provided herein, such proposed findings, award or other determination that the Commission shall have made upon such preliminary investigation or reconsideration aforesaid shall be final, subject to the right of the Commission to reform or modify the same as provided in the compensation laws with reference to other awards or determination of compensation claims. ('27, c. 436, § 4)

4337-5. Same—Payment of compensation awarded—A certified copy of the said findings and final award of the Commission, as herein provided, shall be filed with the Attorney General and with the State Auditor, and payment of compensation or other benefits as the same may be determined by the Industrial Commission in such final award shall be paid to the persons entitled thereto by the State Treasurer upon warrants prepared and signed by the Industrial Commission and approved by the State Auditor, pursuant to said final award, out of any money appropriated for the purpose of paying such compensation claims against the State of Minnesota. Provided that it shall not be necessary to take and file receipts with the Industrial Commission for the payment of installments of compensation or other compensation benefits paid under the provisions of this act to employees of the State of Minnesota or in compliance with the final awards of the Commission herein provided. ('27, c. 436, § 5)

CHAPTER 23B

IMMIGRATION

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4338, 4339. [Superseded.] >

State board of immigration and the office of Commissioner of Immigration are abolished. See § 53-45. The powers of the board and Commissioner are transferred to the Department of Conservation. See § 53-22.

4340. Commissioner of immigration—Term—Compensation, etc.—Other agents—The said board of immigration shall appoint a qualified elector of this state to be the general executive agent of said board, and such agent shall be officially known and styled, commissioner of immigration. The said commissioner of immigration shall hold office during the pleasure of said board, shall receive such compensation as said board shall determine, and shall perform such functions as said board may designate. Before entrance upon the duties of his office, the commissioner of immigration shall make and subscribe an oath of office in the usual

form and shall execute and deliver to the governor a bond to the state of Minnesota, in the sum of ten thousand dollars, with sufficient sureties, to be approved by said board, conditioned upon the honest and faithful performance of his duties as such commissioner. The said board shall also employ such other servants and agents as in the judgment of said board shall be necessary, and shall define the duties, terms of service and compensation of the persons so employed. ('07 c. 267 § 3) [3949]

Office of commissioner of immigration abolished. See § 53-45. The powers of the Commissioner are transferred to the Department of Conservation.

4341. Office—The Minnesota state board of immigration shall be provided with an office and suitable furniture and stationery at the expense of the state. ('07 c. 267 § 4) [3950]

4342. Duties of board—Annual report—The duties of said board of immigration, so far as practicable, shall be to collect and arrange statistics and other information in reference to the lands and general and

special resources of the state of Minnesota, and the advantages of this state as a place of residence; to spread knowledge of the same throughout the civilized world by correspondence, by messengers and public lectures and by all forms of legitimate advertising; to facilitate the immigration of such persons of good moral character as may desire a change of domicile, and to answer all inquiries from persons residing within or without the state, upon the subjects aforesaid. At each session of the state legislature, the board shall make a report of all its transactions dur-

ing the biennial period next preceding the first day of such session. ('07 c. 267 § 5) [3951]

"State Colonization Commission" under agriculture and rural credits, '21 c. 330.

4343. Advertising and disposal of public lands—The Minnesota state board of immigration shall, in addition to the performance of the duties hereinbefore described, co-operate, as far as practicable, with the state land commissioner, in and about the advertising and disposal of public lands. ('07 c. 267 § 6) [3952]

CHAPTER 24

SOLDIERS' HOME, RELIEF, ETC.

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diers' home shall be maintained at Minneapolis, under the management of seven trustees, to be known as the "Soldiers' Home Board," as a home for honorably discharged soldiers, sailors, and marines of the United States who served in the Mexican War, the War of the Rebellion, or the Spanish-American War, and for persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not. But no person shall be admitted to the home who has not been a resident of the state for one year next preceding the date of his application, unless he served in a Minnesota regiment, or was credited to this state, or served in an Indian campaign as aforesaid. Nor shall any person be admitted unless he is without adequate means of support, and is unable, by reason of infirmity, to properly maintain himself. (1835) [3953]

See following section.

4345. Persons who may be admitted to Soldiers' Home—The object of the soldiers' home shall be to provide a home for all honorably discharged ex-soldiers, sailors and marines who served in the army or navy of the United States during the War of the Rebellion, or the Mexican War, or in the war begun in the year, 1898 between the Kingdom of Spain and the United States or the Philippine Insurrection, or the Boxer Rebellion, or members of the Minnesota National Guard mustered into Federal Service in 1916 and served on the Mexican Border, or the war of 1917 and 1918, commonly called "The World War," who now are or may hereafter become citizens of the State of Minnesota. All persons who are otherwise entitled under the provisions unable to earn their living, who, by reason of wounds, disease, or old age or infirmities are unable to earn their living, and who have no adequate means of support. No applicants shall be admitted to the soldiers' home who has not been a resident of the State of Minnesota for one year next preceding the time of having his application, unless he served in a Minnesota regiment or was accredited to the State of Minnesota. All persons who are otherwise entitled under the provisions of this section to admission to said soldiers' home who actually served in any campaign against the Indians in Minnesota in the year 1862 shall be entitled to admission to such soldiers' home, notwithstanding such person were not regularly enlisted, mustered into or discharged from the military service of the United States.

The Board of Trustees are hereby authorized to admit wives with their husbands, and the widows or

4344. Who may be admitted—The Minnesota sol-

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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William H. Mason
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1940

4031-86. County may assume bonds.—Any county wherein any such project or portion thereof is located, may voluntarily assume in the manner hereinafter specified the obligation to pay that portion of the principal and interest of the bonds issued before the approval and acceptance of such project and remaining unpaid at maturity, of any school district or township situated in said county and wholly or partly lying within said project, which portion bears the same proportion to the whole of said unpaid principal and interest as the last assessed valuation, prior to the acceptance of said project, of lands then acquired by the state pursuant to this Act in such school districts or townships bears to the total assessed valuation for the same year of such school district or township. Such assumption shall be evidenced by a resolution of the county board of said county, a copy of which shall be certified to the state auditor within one year after the acceptance of such project; and thereafter, if any of such bonds shall remain unpaid at maturity the county board shall upon demand of the governing body of such school district or township or of the holder of any such bond provide for the payment of the portion thereof so assumed, and such county shall levy general taxes on all the taxable property of the county therefor, or shall issue its bonds to raise such sum as may be needed, conforming to the provisions of law respecting the issuance of county refunding bonds. The proceeds of such taxes or bonds shall be paid over by the county treasurer to the treasurer of the school district or township; provided, however, that no such payments shall be made by the county to such school district or township until such time as the moneys in the treasury of such school district or township together with the moneys so to be paid by said county shall be sufficient to pay in full each of said bonds as each may become due.

In the event that any such county shall fail or neglect so to adopt and certify such resolution, the state auditor shall withhold from the payments to be made to such county under the provisions of Section 3 of this Act, a sum equal to that portion of the principal and interest of such outstanding bonds which bears the same proportion to the whole thereof as the above determined assessed valuation of lands acquired by the State within such project bears to the total assessed valuation for the same year of such school district or township. Moneys so withheld from the county shall be set aside in the State Treasury and shall not be paid to the county until the full principal and interest of such school district and township bonds shall have been paid.

In the event that any such bonds remain unpaid at maturity, upon the demand of the governing body of such school district or township, or the holder of any such bonds, the State Auditor shall issue to the Treasurer of such school district or township a warrant on the State Treasurer for that portion of such past due principal and interest computed as in the case of the county's liability hereinbefore authorized to be voluntarily assumed. All moneys received by any school district or township pursuant to this section shall be applied to the payment of such past due bonds and interest. (Act Apr. 22, 1933, c. 402, §12.)

4031-87. Violation of rules a misdemeanor.—Any person who within the limits of any such project shall wilfully violate or fail to comply with any rule or regulation of the Department of Conservation adopted

and promulgated in accordance with the provisions of this Act shall be deemed guilty of a misdemeanor. (Act Apr. 22, 1933, c. 402, §13.)

4031-88. Provisions separable.—This Act shall be held unconstitutional only in the event that some major provisions of the Act are found unconstitutional and invalid that would make the Act unworkable. If any minor provisions of this Act are held unconstitutional it shall in no way affect or invalidate any other provision or part thereof; and this Act shall be deemed workable if Section 5 thereof is constitutional. (Act Apr. 22, 1933, c. 402, §14.)

PUBLIC ASSISTANCE IN TREE PLANTING

4031-89. Assistance in tree planting.—The Agricultural Extension Department of the University of Minnesota is hereby authorized and directed to cooperate with the Secretary of Agriculture of the United States in providing assistance in tree planting to owners of land by the procurement of forest tree planting stock, not including fruit or ornamental trees, shrubs or plants, and in the distribution to planters of such forest tree planting stock at cost, plus transportation and administrative charges, to the end that such planting stock so distributed shall be used for the purpose of establishing windbreaks, shelterbelts and farm woodlots upon denuded or nonforested lands and for protecting farm buildings, crops, and fields from wind erosion, and for furnishing forest cover beneficial to water conservation and bird life. (Act Apr. 21, 1939, c. 385, §1.)

4031-90. Number of trees.—Not less than 1000 trees shall be sold for an individual planting; no trees may be resold by the succeeding purchasers. The term forest planting stock shall be considered to mean one or two year old seedling stock of deciduous trees and 2-2 or 3-2 coniferous trees customarily used for the purposes mentioned above, and such other specifications as may be necessary to ensure successful growth. (Act Apr. 21, 1939, c. 385, §2.)

4031-91. Home grown trees given preference.—In all purchases of forest planting stock under the provisions of this Act, preference shall be given to trees grown in this state by duly inspected Minnesota nurseries, and such purchases shall be paid for out of the fund hereinafter created and accruals thereto from sale of trees purchased. If suitable stock for this purpose cannot be obtained from Minnesota nurseries, it will be permissible to secure such nursery stock from nurseries outside this state. All moneys received from the sale of trees shall be placed in the State Tree Fund, which said fund is hereby created. (Act Apr. 21, 1939, c. 385, §3.)

4031-92. Appropriation.—The sum of \$2,500 for the fiscal year ending June 30, 1940, and the sum of \$2,500 for the fiscal year ending June 30, 1941, is hereby appropriated for the payment of the expenses for the carrying out the provisions of this Act. Such funds, together with any funds received from the United States Government for tree planting aid, under the Clark-McNary Act or other acts, shall be placed in the State Tree Fund and shall be expended only as herein previously stated under the direction of the Extension Department of the University of Minnesota. (Act Apr. 21, 1939, c. 385, §4.)

Sec. 5 of Act Apr. 21, 1939, cited, provides that the act shall take effect from its passage.

CHAPTER 23

Department of Labor and Industries

INDUSTRIAL COMMISSION

4039. Hours public sessions—Proceedings.

Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not report filed under 4197. Op. Atty. Gen. (851j), July 23, 1935.

4041. Secretary—Salary—Duties.

Salary of secretary placed at maximum of \$3600 may be fixed under Laws 1935, c. 391, §37, at \$3000, notwithstanding that that was the amount he was receiving at the passage of the act. Op. Atty. Gen. (231a), July 19, 1935.

4041-1. Certain Industrial Commission records may be destroyed.—The Secretary of the Industrial Commission of the Department of Labor and Industry of the State of Minnesota hereby is authorized, with the consent and approval of the three commissioners composing the Industrial Commission, to destroy the following files and records of said commission at the times and under the conditions herein specified:

(1) All files, records and correspondence in the office of the Industrial Commission, covering the period prior to June 1, 1921.

(2) All files and records of said commission subsequent thereto, covering the period of one year on June first of each succeeding year. (Act Apr. 8, 1939, c. 149.)

4042. May appoint division heads, assistants, etc.

A chief factory inspector need not pass a competitive examination. Op. Atty. Gen., Dec. 21, 1931.

Industrial commission has power without restriction or restraint to appoint and remove certain designated employes or officials. Op. Atty. Gen., May 10, 1933.

4044. Powers of department of labor and industries transferred to commission.

G. S. 1913, §§3940-3946 are still applicable under this section.

4046. Powers and duties.

* * * * *

(4). [Repealed.]

Subdivision (4) repealed Apr. 22, 1939, c. 440, §20, post §4254-40.

* * * * *

Editorial note.—Power conferred on the industrial commission is transferred to the director of employment and security by Act Apr. 22, 1939, c. 431, Art. 7, §2(11)(d), ante §§199-102(11)(d).

State regulations providing minimum wage in excess of that fixed under industry codes under the NRA are controlling. Op. Atty. Gen., Oct. 28, 1933.

Strikes and boycotts—right to picket in non-labor disputes. 19MinnLawRev817.

4048. Qualifications of inspectors.

Op. Atty. Gen., May 10, 1933; note under §4042.

In view of Laws 1921, c. 81, a chief factory inspector need not pass a competitive examination. Op. Atty. Gen., Dec. 21, 1931.

4049. Terms defined.

Section 9193(3), limiting the time to sue for damages, "caused by a milldam," to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electric current to be distributed and sold to the public for lighting, heating and power purposes. Zamani v. O., 182M355, 234 NW457. See Dun. Dig. 5605(79), 5655.

4050. Enforcement of labor laws by labor department.

Industrial commission has power to gather wage data and to examine wage records of adult women. Op. Atty. Gen., June 26, 1933.

4050-1. Industrial commission to make study of conditions.—For the purpose of improving the State employment offices and other employment agencies under its supervision, and to enable it to more efficiently perform the duties imposed upon it, and in cooperation with the federal authorities in an intelligent, long-time employment program, the State Industrial Commission is hereby authorized to make a thorough, comprehensive, scientific and objective study of labor conditions, and to gather and record authentic and scientific data in relation thereto, and in this connection to operate a laboratory experiment or demonstration station or stations. (Act Jan. 29, 1931, c. 5, §1.)

4050-2. May receive gifts.—The industrial commission is hereby authorized to receive and accept gifts or contributions of funds to be used in carrying out the purposes of Section 1 [§4050-1] hereof, and to assist in the supervision and conduct of said study, and to defray, in whole or in part, the cost of said work. (Act Jan. 29, 1931, c. 5, §2.)

4050-3. Supervision of funds.—Any funds or contributions so made shall be under the exclusive supervision and control of said industrial commission, may be deposited in such bank or banks as it may select,

and may be disbursed in such manner and for such purposes as said industrial commission shall determine, consistent however, with the provisions of this act and with the conditions and purposes of any such gift or contribution. (Act Jan. 29, 1931, c. 5, §3.)

Sec. 4 provides that the act shall take effect from and after its passage.

ELEVATORS

4052. Lock or fastening device.

One entering dimly lighted office building lobby after elevator service had terminated for night was guilty of contributory negligence as matter of law in further opening elevator door and stepping into shaft without ascertaining whether elevator was at floor, though he relied on custom of leaving shaft door ajar when car was at that door. Murray v. A., 202M62, 277NW424. See Dun. Dig. 7022.

FOUNDRIES

4075. Various definitions.

See §1630-4(12).

HOURS OF, AND RESTRICTIONS ON, LABOR

4087. Ten hours to constitute one day's work, etc.

Employee working over time limits is not particeps criminis. Thibault v. N., 198M246, 269NW466. See Dun. Dig. 5812a.

An adult workman may agree to work in any employment a longer or shorter period than 10 hours each day for any compensation acceptable to him. Id.

Where an adult man agrees to serve as manager of a store at a stipulated weekly salary which is paid at end of each week, he cannot after employment terminates, recover extra pay for time he worked in excess of ten hours a day. Id. See Dun. Dig. 5817.

The Wagner Labor Act cases. 22MinnLawRev1.

4091. Locomotive engineers, etc.—Hours.

Law restricting hours of continuous labor more than do federal regulations prescribed by sections 61 and 62, ch. 3, Tit. 45 of the U. S. Code, is unconstitutional. Op. Atty. Gen., Mar. 21, 1933.

The purpose of House File No. 23 of Special Session of 1932 which would amend §§4091 and 4092 is to regulate intrastate commerce and not interstate commerce, and thus construed would be constitutional. Op. Atty. Gen., Dec. 21, 1933.

4092. Certain railroad employees—Hours.

Op. Atty. Gen., Mar. 21, 1933; note under §4091.

Op. Atty. Gen., Dec. 21, 1933; note under §4091.

4094. Employment of children under fourteen years.—No child under fourteen (14) years of age shall be employed, permitted or suffered to work at any time, in or in connection with any factory, mill or workshop, or in any mine; or in the construction of any building, or about any engineering work; it shall be unlawful for any person, firm or corporation, to employ or exhibit any child under fourteen (14) years of age in any business or service whatever, during any part of the term during which the public schools of the district in which the child resides are in session. ('07, c. 299; '12, c. 8, §1; G. S. '13, §3839; '13, c. 516, §1; Apr. 18, 1929, c. 234, §1.)

No exception in favor of agricultural employment. Op. Atty. Gen., June 21, 1929.

"While school is in session," means hours from 9:00 A. M. to 4:00 P. M. each day and not full school year. Op. Atty. Gen., Apr. 22, 1933.

Section does not prohibit employment after school hours or on Saturdays and holidays. Op. Atty. Gen. (270a-4), Apr. 15, 1935.

4100. Children under 16—Hours of employment—Posted notice.

Op. Atty. Gen., Apr. 6, 1931; note under §§4103, 4106.

The fact that the beneficiaries, the parents of the decedent, violated §§4100 and 4101 does not constitute contributory negligence as a matter of law so as to entitle defendants to judgment non obstante. Weber v. B., 182 M486, 234NW682. See Dun. Dig. 2616(10).

Applicable to agricultural employment. Op. Atty. Gen., June 21, 1929.

The provision of the Street Trades Law, Laws 1921, c. 318, §1, which permits children under 16 to sell papers after 7 o'clock at night, modifies this section. Op. Atty. Gen., Apr. 6, 1931.

The use of children under 16 in hotel entertainment after 7 P. M. is a violation of the Child Labor Law, in the absence of a proper permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers." Op. Atty. Gen., Dec. 22, 1931.

Children under 16 years of age appearing in singing and dancing acts after 7 P. M., for which father is paid compensation, are engaged in a gainful occupation within meaning of this section. Op. Atty. Gen. (270a-5), Aug. 25, 1934.

4101. Penalties for violation.

Weber v. B., 182M486, 234NW682; note under §4100. "Whoever" means any person, including a father, who has under his control a child under 16 years of age and who permits such child to be employed without permit in violation of §4100. Op. Atty. Gen. (270a-5), Aug. 25, 1934.

4103. Children under specified ages—Prohibited employments—Penalties.—No person shall employ or permit any child under the age of sixteen (16) years to serve or work as an employe of such person in any of the following occupations:

Sewing or adjusting belts used on machinery; oiling or assisting in oiling, wiping, or cleaning machinery; operating or assisting in operating circular or band saws, wood shapers, wood jointers, planers, sandpaper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood turning or boring machinery, stamping machines in sheet metal and tin-ware manufacture, stamping machines in washer and nut factories; operating corrugating rolls used in roofing factories; operating a steam boiler, steam machinery, or other steam generating apparatus; setting pins in bowling alleys; operating or assisting in operating dough grates or cracker machinery; operating wire or iron straightening machinery; operating or assisting in operating rolling mill machinery; punches or shears, washing, grinding or mixing mill; operating calendar rolls in rubber manufacturing; operating or assisting in operating laundry machinery; preparing or assisting in preparing any composition in which dangerous or poisonous acids are used; operating or assisting in operating any passenger or freight elevator; manufacturing of goods for immoral purposes; nor in any other employment or occupation dangerous to the life, limb, health or morals of such child.

No female under sixteen (16) years of age shall be employed where such employment requires such female to stand constantly during such employment.

No child under the age of eighteen (18) years shall be employed as a rope or wire walker, contortionist, or at flying rings, horizontal bars, trapeze or other aerial acts, pyramiding, weight lifting, balancing, or casting acts, or in any practices or exhibitions dangerous or injurious to the life, limb, health or morals of such child.

No child under the age of ten years, whether or not a resident of this state, may be employed or exhibited in any theatrical exhibition except in the cases hereinafter referred to.

No child over the age of ten years and under the age of 16 years, whether or not a resident of this state, shall be employed or exhibited in any theatrical entertainment except with the permission of the Industrial Commission; provided that under a permit hereinafter provided for one or more children under the age of 16 years may participate in a family group with either or both of their parents in instrumental musical performance not prohibited as being dangerous or injurious to the health, life, limb or morals of such child or children and not detrimental to their education; and provided, that under such a permit a child or children under the age of 16 years may participate in legitimate dramatic performances by adults where some part or parts can only be portrayed by a child or children and where no singing, dancing, or acrobatic performance nor any practice or exhibition dangerous or injurious to the life, limbs, health or morals is performed by such child or children.

In the event it is desired to employ or exhibit in any theatrical entertainment a child within the age limits permitted by law, during that portion of the year when such employment or exhibition is permitted, written application shall be made to the Industrial Commission, specifying the name of the child, its age,

and the names and residence of its parent or guardian, the nature, and kind of such performances; the dates, duration and number of performances desired, together with the place and character of the exhibition.

Application for any permit under this act shall be made at least 72 hours before the first performance at which it is desired to exhibit such child.

The Industrial Commission shall, through its Division of Women and Children, investigate each application and shall have power to grant a permit for such employment or exhibition not prohibited by law and for any period during which such employment or exhibition is not prohibited by law after it shall first find that the health, education or school work, morals and welfare will not be detrimentally affected by such employment or exhibition or by the environment in which the same is rehearsed or given. Such permit shall specify the name and residence of the child and the nature and date of performances and the number and duration thereof permitted.

The Industrial Commission shall revoke any permit whenever, in its opinion the exhibition of any child in any performance is detrimental to its health, welfare or morals or is interfering with its education.

Nothing contained in this section or in Section 4094, General Statutes 1923, shall prohibit the appearance of any child in an entertainment given by one or more religious or educational organizations or by a neighborhood association of parents of the children who may perform before it or in any recital connected with the teaching of the art or practice of music; but this proviso shall not be construed as authorizing the appearance of any child in any such entertainment at which an admission fee is charged unless the entire program is furnished by and for the benefit of such religious or educational organization or neighborhood association at such recital unless the entire program is furnished by the pupils of the teachers sponsoring the recital.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor. ('07, c. 299; '12, c. 8, §10; G. S. '13, §3848; '13, c.c. 120, 516, §2; '27, c. 388, §1; Apr. 18, 1929, c. 234, §2.)

Op. Atty. Gen., Apr. 6, 1931; notes under §§4100, 4106. Decedent having met death in an occupation prohibited by law at his age, the case is not within the jurisdiction of the Industrial Commission. Weber v. B., 182M486, 234NW682. See Dun. Dig. 10394(47).

As to the power company, the jury could find that the defense of contributory negligence of the deceased was not established, and such defense was not available to the defendant employer, because of its violation of section. Weber v. B., 182M486, 234NW682. See Dun. Dig. 6900, 6016.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plaintiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employes in the packing corporation worked, and the latter employing a boy under 16 in an occupation dangerous to life and limb. Weber v. B., 182M486, 234NW682. See Dun. Dig. 2996, 5859.

"Theatrical entertainment" and "theatrical exhibition" defined. Op. Atty. Gen., Apr. 6, 1931.

The use of children under the age of 16 as entertainment features at a night club would be a violation of the Child Labor Law, unless the children were engaged in a theatrical entertainment under a permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

This section does not prohibit children being taught to operate power sewing machines and who pay a tuition. Op. Atty. Gen., Apr. 10, 1931.

This section does not permit the appearance of a child under ten years of age as a singer in a theater wherein the father plays an instrument in the orchestra. Op. Atty. Gen., Aug. 21, 1931.

County and state fairs are not educational organizations within the meaning of statute. Op. Atty. Gen., Aug. 21, 1931.

A dancing exhibition participated in by children under ten years of age and given in connection with a movie performance in a theater is not to be construed as a "recital connected with the teaching of the art or practice of music," though the exhibition is put on by a dancing teacher and the performers are her pupils. Op. Atty. Gen., Aug. 21, 1931.

A child under ten years of age may participate in a family group in giving an instrumental musical per-

formance providing that a permit is obtained. Op. Atty. Gen., Aug. 21, 1931.

Children under ten years of age cannot appear in a singing and dancing act under the auspices of the Minneapolis Park Board, though no admission fee is charged. Op. Atty. Gen., Aug. 21, 1931.

An ordinary lodge is neither a religious nor educational organization, and a child under ten years of age can only appear at a benefit performance under a permit. Op. Atty. Gen., Aug. 21, 1931.

Does not permit appearance of a movie star of eight years of age on the stage for the purpose of giving a monologue. Op. Atty. Gen., Aug. 21, 1931.

Fact that parent merely accompanies child on the stage is of no legal consequence. Op. Atty. Gen., Aug. 21, 1931.

Boys regularly employed as newspaper carriers are exempt from the provisions of the law only while distributing papers to their regular subscribers, and not at times that they are on the street in their regular districts selling papers. Op. Atty. Gen., Nov. 25, 1931.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers." Op. Atty. Gen., Dec. 22, 1931.

Both booking agent and operator of night club can be prosecuted for violation of this section. Op. Atty. Gen. (270a), June 27, 1934.

4106. Certain employments forbidden—penalties.—No boy under sixteen years of age and no girl under eighteen years of age shall engage in or carry on or be employed or permitted or suffered to be employed in any city of the first, second or third class in the occupation of peddling, bootblacking or distributing or selling newspapers, magazines, periodicals or circulars upon the streets or in public places; provided, however, that any boy between fourteen and sixteen years of age, upon application to the school authorities as in the case of application for an employment certificate, and upon compliance with all the requirements for the issuance of an employment certificate, shall receive a permit and badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations between the hours of five o'clock A. M., and eight o'clock P. M., of each day, but at no other time, except as provided in Section 3 hereof; and, providing further, that any boy between twelve and sixteen years of age, upon application as provided in the preceding section and upon due proof of age and physical fitness in the manner provided by law for the issuance of employment certificates, may receive a permit and a badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations during those hours between five o'clock A. M. and eight o'clock P. M., when the public schools of the city where such boy reside are not in session; but at no other time except as provided in Section 3 hereof.

Any person who knowingly and wilfully employs or permits or suffers to be employed any child in violation of this section, or any person who knowingly and wilfully aids or abets any child to violate the provisions of this section shall be guilty of a misdemeanor. ('21, c. 318, §1; Mar. 7, 1933, c. 63.)

Op. Atty. Gen., Apr. 6, 1931; note under §§4100, 4103.

The engagement of a boy under 14 to broadcast for pay on a radio station during school hours is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

Engagement of a boy under the age of 16 as a paid piano player and musical entertainer in a ballroom after 7 P. M. is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

Child selling poppies on street without compensation violates this section. Op. Atty. Gen., June 8, 1933.

Section does not prohibit sale of magazines or periodicals by boys at homes of private individuals. Op. Atty. Gen. (270a-4), Apr. 15, 1935.

4109. Violation of act delinquency—Enforcement. Op. Atty. Gen., Nov. 25, 1931; note under §4106.

4111. Act not applicable to carriers.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers." Op. Atty. Gen., Dec. 22, 1931.

4111-1. Employment of minors prohibited.—No person under the age of 18 years shall be employed, permitted or suffered to work, or to appear as a participant, in or in connection with any walkathon, dance marathon or similar contest, night club, beer

parlor or other place of like nature or character. (Act Apr. 5, 1935, c. 109, §1.)

A fraternal organization hiring minors under 18 years of age to perform in a ballet in an indoor circus in auditorium on main floor while beer was served in cafeteria on mezzanine floor violated this section. Op. Atty. Gen. (605b-35), Feb. 27, 1936.

Minors under age of 18 cannot work in place where non-intoxicating malt liquors are sold. Op. Atty. Gen. (217f-3), Sept. 24, 1936.

Minors under 18 years of age may not serve non-intoxicating malt liquors in a restaurant. Op. Atty. Gen. (217f-3), July 26, 1937.

This section relates to nonintoxicating malt beverages, while §3200-23 applies to intoxicating liquors. Op. Atty. Gen. (218J-12), June 10, 1939.

Section applies to a place where nonintoxicating malt liquor is sold. Id.

Fact that a minor is a child of the owner does not exempt her from this section. Id.

4111-2. Certain acts a misdemeanor.—Any person who employs, causes or suffers to be employed, or who exhibits, uses, or has in custody for the purpose of exhibition, use or employment, any child under 18 years, or who, having the care, custody or control of any such child as parent, relative or guardian, employer or otherwise, sells, lets out, gives away, or in any way procures or consents to the employment, or to such use or exhibition of such child, or who neglects or refuses to restrain such child from engaging or acting in any occupation prohibited by this section, shall be guilty of a misdemeanor. (Act Apr. 5, 1935, c. 109, §2.)

4111-3. Application of act.—This act shall not apply to participation in any theatrical performance as defined and regulated by Mason's Minnesota Statutes of 1927, Section 4103. (Act Apr. 5, 1935, c. 109, §3.)

4116 to 4126 [Repealed].

Repealed Apr. 20, 1933, c. 354, §7, post, §4126-8, effective July 1, 1933.

These sections have been declared unconstitutional by the attorney general in opinions, abstracts of which are set forth below:

In submitting to the governor for his approval the bill attempting to limit the hours of employment of women, certain amendments in the bill as passed by the senate and house were inadvertently omitted, with the result that the bill as approved by the governor, filed with the secretary of state, and published as Laws 1923, c. 422 (Mason's Minn. Stat., 1927, secs. 4116-4126), was never constitutionally enacted. Op. Atty. Gen., June 25, 1926.

Laws 1923, c. 422 [Mason's Minn. Stat., 1927, secs. 4116-4126], never having been constitutionally enacted, the hours of employment for women in cities of the first and second class are governed by Laws 1913, c. 581 [set forth post as §§4126-½ to 4126-¾b], and as to all other cities Laws 1909, c. 499 [set forth post as §§4126-¾c to 4126-¾h], is applicable. Op. Atty. Gen., May 8, 1931.

4126-½ to 4126-¾h. [Repealed].

Repealed Apr. 20, 1933, c. 354, §7, post, §4126-8, effective July 1, 1933.

Annotations under §4126-½.

See notes under §§4116 to 4126.

The only law regulating the hours of women working in lunch rooms is Laws 1913, c. 581, which applies only to cities of the first and second class. Op. Atty. Gen., May 8, 1931.

The phrase "in cities of the first and second class," is not limited to women employed in telephone or telegraph establishments. Op. Atty. Gen., May 8, 1931.

Under Laws 1913, chapter 581, minimum wage commission has no authority to regulate the hours of certain workers of the state outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

Annotations under §4126-¾a.

Sections 3, 4 and 5 of Laws 1913, c. 581, were expressly repealed by Laws 1919, c. 491, §20, set forth in Mason's Minn. Stat., 1927, as §4190.

Annotations under §4126-¾c.

See notes under §§4116 to 4126.

4126-2. Hours of female employees limited.—No female shall be employed in any public housekeeping, manufacturing, mechanical, mercantile, or laundry occupation, or as a telephone operator for more than fifty-four hours in any one week; provided that this Act shall not apply to cases of emergency in which the safety, health, morals, or welfare of the public may otherwise be affected, or to cases in which night employees may be at the place of employment for no more than twelve hours and shall have opportunity

for at least four hours of sleep, or to employees engaged in the seasonal occupation of preserving perishable fruits, grains or vegetables, where such employment does not continue over a longer period than seventy-five days in any one year, or to telephone operators in municipalities of less than fifteen hundred inhabitants; provided, however, that upon application of any employer, the Industrial Commission may in its discretion, for cause shown exempt any employer or class of employers from the provisions of this Act.

Provided further, that during emergency periods of not to exceed four weeks in the aggregate in any calendar year, the Industrial Commission of Minnesota may, in its discretion, allow longer period of employment for such female employees under such general rules and regulations as the Commission may prescribe and adopt. (Act Apr. 20, 1933, c. 354, §1.)

General office employes and women executives in a mercantile establishment do not come within classification of a mercantile occupation and are not regulated by maximum of 64 hours per week. Op. Atty. Gen., June 21, 1933.

Hours of women employes other than telephone operators, janitresses and elevator operators in banks and offices are not subject to regulations in this act. Id.

"Public housekeeping" embraces kitchen employes, waitresses and chamber maids in a girls' private school and in an old folks' home. Op. Atty. Gen., Sept. 15, 1933.

4126-3. Industrial commission to print schedule.—The Industrial Commission of Minnesota shall supply the abstract of the provisions of this act and the form for the schedules of hours of labor required for this act to all employers to whom this act shall apply upon application therefor. (Act Apr. 20, 1933, c. 354, §2.)

4126-4. Violations a misdemeanor.—Any employer or any agent acting for an employer who shall require or suffer any such employe to work at any business, establishments or company to which this act applies more than the number of hours provided in this act, or who shall fail, neglect or refuse so to arrange the work of such employes in his employ that they shall not work more than the number of hours provided for in this act during any one week; or who shall knowingly permit or suffer any overseer, superintendent, foreman or forelady, or other agents of any employer to violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense in the sum of not less than twenty-five dollars nor more than one hundred dollars. Whenever any person shall have been notified by the Industrial Commission or by the service of a summons in a prosecution, that he is violating any provisions of this act, he shall be punished by like penalty in addition for each and every day that such violation shall have continued after such notification. (Act Apr. 20, 1933, c. 354, §3.)

Duty to prosecute misdemeanors rests on city attorney and not upon county attorney. Op. Atty. Gen. (121b-7), Mar. 19, 1937.

4126-5. Employer to keep record.—Every employer having in his employ more than six female employes shall a keep time book or record stating the number of hours worked by each female employe in his employment on each day of such employment, and the total hours of each week, and the hours of beginning and stopping such work. Such time book or record shall be open to the inspection of the Industrial Commission of Minnesota, or any duly accredited representative of said commission, during any period of employment. Any employer who willfully fails to keep such time book or record required by this section, or who makes any false statements therein or refuses to exhibit such time book or record, or makes any false statement to the Industrial Commission, or its duly accredited representatives in reply to questions submitted for the purpose of carrying out the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine for each offense in the sum of not less than

ten dollars (\$10.00) nor more than twenty-five dollars (\$25.00). (Act Apr. 20, 1933, c. 354, §4.)

Section does not require keeping of a time record where employes' occupation is not regulated by this act. Op. Atty. Gen., June 21, 1933.

Section 4215 is calculated to afford commission facilities for inquiry and determination under this section. Op. Atty. Gen. (270g-5), Oct. 19, 1938.

4126-6. Industrial commission to enforce act.—The Industrial Commission of Minnesota shall be charged with the duty of enforcing the provisions of this act prosecuting all violations thereof. (Act Apr. 20, 1933, c. 354, §5.)

4126-7. Provisions separable.—Each section of this Act every part thereof is hereby declared to be an independent section or part of a section, and if any section, subsection, sentence, clause or phrase of this act shall for any reason be held unconstitutional the validity of the remaining phrases, clauses, sentences, subsections and sections of this act shall not be affected thereby. (Act Apr. 20, 1933, c. 354, §6.)

4126-8. Inconsistent acts repealed.—All Acts and parts of Acts in conflict with the provisions of this Act hereby are repealed, and Laws 1909, Chapter 499, Laws 1913, Chapter 581, Laws 1923, Chapter 422, hereby are repealed. (Act Apr. 20, 1933, c. 354, §7.)

This act did not repeal §4215. Op. Atty. Gen. (270g-5), Oct. 19, 1938.

4126-9. Definitions.—Throughout this Act the following words and phrases as used herein shall be considered to have the following meaning:

1. The term "laundry" shall mean processes connected with the receiving, marking, washing, cleaning, ironing, and distribution of washable or cleaning materials.

2. The term "public housekeeping" shall mean the work of waitresses in restaurants, hotel dining rooms, boarding houses, and all attendants employed at ice cream and light lunch stands and steam table or counter work in cafeterias and delicatessens where freshly cooked foods are served, and the work of chambermaids in hotels and lodging houses and boarding houses and hospitals, and the work of janitresses and car cleaners and of kitchen workers in hotels and restaurants and hospitals and elevator operators.

3. The term "manufacturing" and "mechanical" shall mean processes in the production and distribution of commodities, and manual labor with the aid of machines and tools.

4. The term "mercantile" shall mean the sales force, the wrapping employes, the shipping department employes, the receiving marking and stockroom employes, all employes in any way directly connected with the sale, purchase, and disposition of goods, wares, and merchandise. (Act Apr. 20, 1933, c. 354, §8.)

4126-10. Effective July 1, 1933.—This act shall take effect and be in force from and after July 1, 1933. (Act Apr. 20, 1933, c. 354, §9.)

4126-11. Employers to give written statement to employes in certain cases.—Whenever a contract of employment is consummated between an employer and an employe for work to be performed in this state, or for work to be performed in another state for an employer localized in this state, the employer shall give to the employe a written and signed agreement of hire, which shall clearly and plainly state:

(a) The date on which the agreement was entered into.

(b) The date on which the services of the employe are to begin.

(c) The rate of pay per unit of time, or of commission or by the piece, so that wages due may be readily computed.

(d) The number of hours a day which shall constitute a regular day's work, and whether or not additional hours the employe is required to work shall

constitute overtime and be paid for, and, if so, the rate of pay for overtime work.

(e) A statement of any special responsibility undertaken by the employe, not forbidden by law, which, if not properly performed by the employe, will entitle the employer to make deductions from the wages of the employe, and the terms upon which such deductions may be made. (Act Apr. 15, 1933, c. 250, §1.)

4120-12. Burden of proof on employer if no statement given.—Where no such written agreement is entered into, the burden of proof shall be upon the employer to establish the terms of the verbal agreement in case of a dispute with the employe as to its terms. (Act Apr. 15, 1933, c. 250, §2.)

4120-13. Application of act.—This Act shall not apply to farm labor. Nor shall it apply to casual employes, temporarily employed nor employers employing less than 10 employes. (Act Apr. 15, 1933, c. 250, §3.)

WAGES

Evidence held to sustain finding that failure to return to work for railroad was not a resignation nor abandonment of employment, nor a surrender of seniority rights. *George v. C.*, 183M610, 235NW673. See Dun. Dig. 5808, 5827.

Discharge of railroad fireman for failure to respond to call for emergency run held unjustified. *George v. C.*, 183M610, 235NW673. See Dun. Dig. 5822, 5832.

Railroad fireman's acceptance of reinstatement held not waiver of right to back pay, of which he was wrongfully deprived. *George v. C.*, 183M610, 235NW673. See Dun. Dig. 5832.

*** 4127. Penalty for failure to pay wages promptly.**—Whenever any person, firm, company, association or corporation employing labor within this state discharges a servant or employe from his employment, the wages and/or commissions actually earned and unpaid at the time of such discharge shall become immediately due and payable upon demand of such employe, at the usual place of payment, and if not paid within twenty-four hours after such demand, whether such employment was by the day, hour, week, month or piece or by commissions, such discharged employe may charge and collect the amount of his average daily earnings at the rate agreed upon in the contract of employment, for such period, not exceeding fifteen days (after the expiration of said twenty-four hours) as the employer is in default, until full payment or other settlement, satisfactory to said discharged employe, is made. ('19, c. 175, §1; Apr. 8, 1933, c. 173, §1.)

Wages of persons employed in transitory work must be paid at least every 15 days and within 24 hours upon termination of employment, etc. Laws 1933, c. 223.

Section does not apply to municipal corporations such as the village of Keewatin. Op. Atty. Gen. (358b-2), Aug. 28, 1935.

The Wagner Labor Act cases. 22MinnLawRev1.

4128. Notice to be given—settlement of disputes.—Whenever any such employe (not having a contract for a definite period of service), quits or resigns his employment, the wages and/or commissions earned and unpaid at the time of such quitting or resignation shall become due and payable within five days thereafter, at the usual place of payment, and any such employer failing or refusing to pay such wages and/or commissions, after they so become due, upon the demand of such employe at such place of payment, shall be liable to such employe from the date of such demand for an additional sum equal to the amount of his average daily earnings provided in said contract of employment, for every day (not however, exceeding fifteen days in all), until such payment or other settlement satisfactory to said employe, is made; provided, that if any employe having such a contract as is above defined, gives not less than five days' written notice to his employer of his intention to quit such employment, the wages and/or commissions of the employe giving such notice shall become due at the usual place of payment twenty-four hours after he so quits or resigns, and payment thereof may be

demand accordingly, and the penalty herein provided shall apply in such case from the date of such demand; provided further, that if the employer disputes the amount of wages and/or commissions claimed by such employe under the provisions of this, or the preceding section, and the employer in such case makes a legal tender of the amount which he in good faith claims to be due, he shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having jurisdiction, such employe recovers a greater sum than the amount so tendered with such interest thereon; and if, in such suit, said employe fails to recover a greater sum than that so tendered, with interest as aforesaid, he shall pay the cost of such suit; otherwise the cost thereof shall be paid by said employer; provided further, that in cases where such discharge or quitting employe was, during his employment intrusted with the collection, disbursement or handling of money or property, the employer shall have ten secular days after the termination of the employment, to audit and adjust the accounts of such employe before his or her wages and/or commissions shall become due and payable, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of such period allowed for such audit and adjustment; and if, upon such audit and adjustment of said accounts of such employe, it is found that any money or property intrusted to him by his employer has not been properly accounted for or paid over to the employer, as provided by the terms of the contract of employment, such employe shall not be entitled to the benefit of this act, but the claim for earned and unpaid wages and/or commissions of such employe, if any, shall be disposed of as provided by existing law. ('19, c. 175, §2; Apr. 8, 1933, c. 173, §2.)

Ten-day time limit was only applicable provided employe had not done some act which relieved employe from making demand. *Harris v. N.*, 193M480, 259NW16. See Dun. Dig. 5815.

4134. Payment of salary or wages earned by non-negotiable instruments unlawful, etc.

Payment of wages to employe with script, requiring placing of stamps thereon, held violation of this section. Op. Atty. Gen., Mar. 20, 1933.

4134-1. Certain acts relating to payment of wages a misdemeanor.—Any person, firm, corporation or association who or which directly or indirectly and with intent to defraud causes any employe to give a receipt for wages for a greater amount than that actually paid to the employe for services rendered, or directly or indirectly demands or receives from any employe any rebate or refund from the wages to which the employe is entitled under his contract of employment with such employer, or in any manner makes or attempts to make it appear that the wages paid to any employe were greater than the amount actually paid to the employe, shall be guilty of a misdemeanor. (Act Apr. 15, 1933, c. 249.)

4135. When assignment, sale or transfer of wage or salary is not to be effective.

Under police power legislature may reasonably regulate assignment of unearned wages or salary. *Murphy v. C.*, 187M65, 244NW335. See Dun. Dig. 566.

§§4135 to 4137, apply to both wages and salaries. *Murphy v. C.*, 187M65, 244NW335. See Dun. Dig. 566.

§§4135 to 4137 apply to salary of an elective county commissioner. *Murphy v. C.*, 187M65, 244NW335. See Dun. Dig. 566.

Compensation of school bus drivers under contracts constitute wages or salaries, if bus belongs to school. Op. Atty. Gen., May 9, 1933.

Right of partial assignee to sue. 18MinnLawRev216.

The wage assignment problem. 19MinnLawRev536.

Assignment of bank account. 22MinnLawRev1044.

4136. Unearned wages—Consent of employer—Collection fee—Penalty.

See §7774-57, post.

4137. Assignment of wages in certain cases—Payroll deductions.—Every assignment, sale, or transfer, however made or attempted, of wages or salary to be earned or to become due in whole or in

part more than sixty (60) days from and after the date of making such transfer, sale or assignment shall be absolutely void. Provided, however, that a written contract may be entered into between an employer and employe wherein the employe authorizes the employer to make payroll deductions for the purpose of paying premiums on any life insurance group accident and health insurance, group term life insurance, group annuities or contributions to Credit Unions, a community chest fund, for periods longer than such 60 days. (As amended Mar. 24, 1937, c. 95, §1.)

Sec. 2 of Act Mar. 24, 1937, cited, provides that the Act shall take effect from its passage.

An assignment of salary by school teacher to be earned and to become due more than 60 days from after date of assignment is void. Op. Atty. Gen., June 14, 1933.

In absence of consent by school board in writing, an assignment of school teacher's salary to be earned or to become due is void. *Id.*

Laws 1937, c. 95, does not permit contract between state and an officer or employe for monthly deduction. Op. Atty. Gen. (707b-11), July 28, 1937.

4140-1. Wages to be paid every fifteen days in certain cases.—Every person, firm, corporation or association employing any person or persons to labor or perform service on any project of a transitory nature, such as the construction, paving, repair or maintenance of roads or highways, sewers or ditches, clearing land or the production of forest products, or any other work which requires the employe to change his place of abode, shall pay the wages or earnings of such person or persons at intervals of not more than fifteen days, and payment thereof shall be made at the place of employment or in close proximity thereto. (Act Apr. 13, 1933, c. 223, §1.)

4140-2. Discharged employe must be paid within 24 hours.—When any such transitory employment as is described in section one hereof, which requires an employe to change his place of abode while performing the service required by the employment, is terminated, either by the completion of the work or by the discharge or quitting of the employe, the wages or earnings of such employe in such employment shall be paid within 24 hours, and if not then paid the employer shall pay to the employe his reasonable expenses of remaining in the camp or elsewhere away from his home while awaiting the arrival of payment of his wages or earnings, and if such wages or earnings are not paid within three days after the termination of such employment for any cause the employer shall in addition, pay to the employe the average amount of his daily earnings in such employment from the time of the termination of the employment until payment has been made in full, but not for a longer period of time than fifteen days. (Act Apr. 13, 1933, c. 223, §2.)

4140-3. Railroad pay checks to show amount of deduction.—Every railroad corporation doing business within this state shall state clearly on each pay check, or a statement accompanying such check, issued to an employe for services rendered to such corporation in this state the amount of any deduction made from the regular wage of such employe, the reason therefor and the date or period covered by such deduction. If there are several deductions on one pay check, each shall be set down separately.

Any railroad corporation willfully violating the provisions of this act shall be subject to a fine of \$25.00 for each and every violation thereof; provided, however, if a railroad corporation violates the provisions of this act, with the same employe, two or more times in any one year it shall be prima facie evidence of a wilful violation of the act. (Act Apr. 11, 1935, c. 141, §1; Apr. 8, 1939, c. 169.)

DANGEROUS MACHINERY, STRUCTURES, AND PLACES

4141. Dangerous machinery, how guarded—defective machines, etc.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plain-

tiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employes in the packing corporation worked, and the latter in employing a boy under 16 in an occupation dangerous to life and limb. *Weber v. B.*, 182M486, 234NW682. See Dun. Dig. 2996, 5859.

An employer does not owe the duty of inspecting simple tools and appliances. *Hedicke v. H.*, 185M79, 239NW896. See Dun. Dig. 5888.

The ordinary crate used in the delivery of a two-gallon spring water bottle is a simple appliance, and the mere fact that a sliver therefrom entered the employe's finger, causing infection, does not prove actionable negligence of the employer. *Hedicke v. H.*, 185M79, 239NW896. See Dun. Dig. 5888.

Industrial commission cannot enter upon land owned by federal government where post office is being constructed and enforce safety measures provided by §§4141 to 4187, 4279. Op. Atty. Gen., July 28, 1933.

Simple tool doctrine discussed. 18MinnLawRev435.

4145. Manufacture and sale of unguarded machines prohibited.

Evidence held to sustain finding that failure to guard an electric coal conveyor was proximate cause of injury to plaintiff. *Nelson v. Z.*, 190M313, 251NW534. See Dun. Dig. 5895.

Evidence held not to require finding that plaintiff was guilty of contributory negligence in allowing his hand to be caught in unguarded machinery. *Id.* See Dun. Dig. 5913.

Modern tendency is away from holding as matter of law that an employe is contributorily negligent when an employer's disobedience of a statutory command is proximate cause of injury. *Id.* See Dun. Dig. 5913.

4147. Certain places, etc., to be lighted.

"Stairway" means flight of stairs, a series of steps ascending or descending to a different level, while a hatchway signifies an opening in a floor, sidewalk or deck. 171M408, 214NW269.

This section is not applicable to domestic service or agricultural labor. *Dahlen v. P.*, 195M470, 263NW602. See Dun. Dig. 5869.

4152. Protection of hoistways, elevators, etc.

The word "Hatchway" has reference to openings in a floor, sidewalk, or deck, and not to the head of a stairway. 171M408, 214NW269.

Section does not protect an invitee who was not an employe. 171M440, 214NW659.

Passenger elevator owners as common carriers. 16MinnLawRev585.

4158. Scaffolds, hoists, etc.—Etc.

An ordinary stepladder is a simple appliance and comes within the simple tool doctrine, relieving the employer, who furnishes it to be used by his employe, from the duty of inspection. *Mozey v. E.*, 182M419, 234NW687. See Dun. Dig. 5888.

There was no need to base decision allowing recovery for injuries suffered from fall of scaffold upon this section where its applicability was not urged in court below. *Gilbert v. M.*, 192M495, 257NW73. See Dun. Dig. 5888.

4159. Notices, etc., how served—Liability of owners, etc.

Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not reported filed under 4197. Op. Atty. Gen. (851j), July 23, 1936.

4161. "Prime mover" defined, etc.

Nelson v. Z., 190M313, 251NW534; note under §4145.

4171. Definition.

Wickstrom v. T., 191M327, 254NW1; note under §4174.

4172. Duty of employer.

Employe suing at common law held to have assumed the risk of working in ice-cold water in defendant's mine. *Jurovich v. I.*, 181M555, 233NW465. See Dun. Dig. 5978.

Evidence held to sustain finding that creamery violated statutes in leaving water on floors and in failing to heat office, and that there was causal connection between such violations and tuberculosis of employe. *Fredrickson v. A.*, 202M12, 277NW345. See Dun. Dig. 5867.

Whether creamery employe was guilty of contributory negligence in continuing to work in a cold room with wet floors held for jury. *Id.* See Dun. Dig. 5881.

"Stand while working" does not mean that an employe must remain stationary while performing his work. *Id.* See Dun. Dig. 5883.

4174. Ventilation.

Risk of injury from violation of this section is not assumed. 180M21, 230NW125.

In action by employe charging disease contracted because of fumes and gases from dynamite used in blasting a tunnel, wherein defendant denied all negligence and denied practicability of installing adequate ventilating facilities, court erred in striking out as frivolous

defense of assumption of risk. *Wickstrom v. T.*, 191M 327, 254NW1. See Dun. Dig. 5973, 5978, 7668a.

Grain elevators come within provision of section. *Clark v. B.*, 195M44, 261NW596. See Dun. Dig. 5899.

Recovery by employee predicated solely upon violation of ventilating statutes, defense of assumption of risk is not available. *Id.* See Dun. Dig. 6969.

In action for damages for pulmonary tuberculosis alleged to have been contracted while in defendant's employ though violation of §§4172, 4173, 4174, 4176, court properly ordered judgment for defendant because cause of condition was wholly within field of speculation and conjecture. *O'Connor v. P.*, 197M534, 267NW507. See Dun. Dig. 10386.

Evidence justified finding liability against employers who failed to meet statutory requirements relating to ventilation of premises where employee was required to do his work and became ill from silicosis and tuberculosis. *Golden v. L.*, 203M211, 281NW249. See Dun. Dig. 5869.

Whether an employee suffering from silicosis by reason of improper ventilation was guilty of contributory negligence held for jury. *Id.* See Dun. Dig. 6016.

4176. Heat and ventilation.

Whether creamery employee was guilty of contributory negligence in continuing to work in a cold room with wet floors held for jury. *Fredrickson v. A.*, 202M12, 277NW345. See Dun. Dig. 5883(38).

Evidence held to sustain finding that creamery violated statutes in leaving water on floors and in failing to heat office, and that there was causal connection between such violations and tuberculosis of employee. *Id.* See Dun. Dig. 5867.

4177. Toilet facilities.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW136.

4181. To be kept in perfect condition.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW136.

4194. Scope of report.

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

4197. Admissibility of report.

Prohibition against admitting reports into evidence applies only to those reports submitted to Industrial Commission, not reports submitted to insurance companies or others. *Hector Const. Co. v. B.*, 194M310, 260NW 496. See Dun. Dig. 3348.

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not report filed under 4197. Op. Atty. Gen. (851j), July 23, 1935.

4202-1. Executive council may appropriate money for safety inspection work.—The State Executive Council is hereby authorized and empowered to expend out of any relief funds available therefor, such sums of money which, in their judgment, may be necessary for safety inspection work required by law for the protection of employes engaged upon such state and federal projects as may be designated by the Council. (Act Apr. 22, 1935, c. 233, §1.)

Sec. 2 of Act Apr. 22, 1935, cited, provides that the act shall take effect from passage.

Money appropriated by Laws 1935, c. 51, is available for use by executive council under Laws 1935, c. 233. Op. Atty. Gen. (928c-15), June 3, 1935.

MINIMUM WAGES

4210. Duties of minimum wage commission transferred.

Since the supreme court of the United States in case of *West Coast Hotel Co. v. Ernest Parrish* reversed its decision in *Adkins v. Children's Hospital*, 261US525, entire act covering minimum wages of women and children is legal and enforceable. Op. Atty. Gen. (86a-53), Apr. 16, 1937.

4214. To investigate wages of women and minors.—The commission may at its discretion investigate the wages paid to women and minors in any occupation in this state. At the request of not less than one hundred persons engaged in any occupation in which women and minors are employed, the commission shall forthwith make such investigation as herein provided. The term minor, for the purpose of such investigation and for providing minimum wages to be paid to women and minors, shall mean any person, male or female, under the age of 21 years. (As amended Mar. 18, 1937, c. 79, §1.)

Employment of minors in wholesale and retail nursery consisting of seeding and cultivating bulbs, flowers and ornamental shrubs is within regulation of minimum wage law. Op. Atty. Gen., Nov. 22, 1933.

4215. Duties of employers—Register.

Industrial commission has power to gather wage data and to examine wage records of adult women. Op. Atty. Gen., June 26, 1933.

This section was not superseded by Laws 1933, c. 354, §4 (§4126-5), and is calculated to afford commission facilities for inquiry and determination under the later act. Op. Atty. Gen. (270g-5), Oct. 19, 1938.

4216. Public hearings—Witnesses, etc.

Unless action of state industrial commission in determining what constitutes a minimum living wage for women and minors is executive merely, its procedure must include a full hearing and there must be evidence. *Western Union Telegraph Co. v. I.* (DC-Minn), 24FSupp 370.

4217. Legal minimum wages to be established.

Establishment of minimum wages for women and minors employed in industry is within regulatory power of state. *Western Union Telegraph Co. v. I.* (DC-Minn), 24FSupp370.

Company must comply with state regulation, though minimum wage exceeds that in federal code. Op. Atty. Gen., Aug. 29, 1933.

4218. Wages, how determined—Order of commission—Copies to be mailed and posted.—Subdivision 1.

The industrial commission of Minnesota shall determine the minimum wages sufficient for living wages for women and minors or [sic] ordinary ability and also the minimum wages sufficient for living wages for learners and apprentices. The commission shall then issue an order to be effective 30 days thereafter, making the wages thus determined the minimum wages in said occupation throughout the state, or within any area of the state if differences in the cost of living warrant this restriction; provided, however, that those provisions of any order heretofore or hereafter issued by the commission with reference to the rate of pay for each hour of employment in excess of the minimum number of hours established by the commission, shall not apply to cases in which night telephone operators may be at their place of employment for no more than 12 hours and shall have an opportunity for at least four hours of sleep during the said 12 hours of employment, and shall not apply to telephone operators employed in cities, towns, villages, boroughs and townships of less than 1,500 inhabitants.

Subdivision 2. Such order shall be published in one issue of a daily newspaper of general circulation published in each city of the first class, at least 20 days before the same takes effect, and proof of such publication as required in the publication of legal notices, together with the original order shall be filed with the commission. A copy of such order and of the proofs of publication, duly certified by the secretary of said commission, shall be prima facie evidence of the existence of such order and the contents thereof, and of the facts of publication as contained in such certified copies, and the certificate of the secretary of said commission shall be prima facie evidence of the filing and of other acts required by law in relation to said order.

Subdivision 3. The commission shall mail to each employer affected by said order, whose name and address is known to the commission, a copy or copies of said order with such general or particular directions for posting the same as the commission may determine, and such employer shall post such order or orders and keep the same posted in his factory or place where women or minors are employed, as required by said commission. Provided, however, that failure to mail such orders to any employer affected thereby shall not relieve such employer from the duty to comply with such order in relation to the payment of a wage not less than the minimum prescribed in such order. (As amended Apr. 10, 1939, c. 186.)

Minimum wage commission had no authority to regulate the hours of workers outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

Publication of Order No. 12 adopted pursuant to G. S. 1913, §3909, before amendment by Laws 1923, c. 153, is

unnecessary, section being prospective in operation. Op. Atty. Gen. (845c), Sept. 17, 1936.

4224. Employment at less than minimum wage prohibited.

Since the supreme court of the United States in case of West Coast Hotel Co. v. Ernest Parrish reversed its decision in Adkins v. Children's Hospital, 261US525, entire act covering minimum wages of women and children is legal and enforceable. Op. Atty. Gen. (86a-53), Apr. 16, 1937.

4232. Construction of terms.

Farm laborers and household servants are not within provision of act. Op. Atty. Gen., Mar. 12, 1934.

Neither Laws 1937, c. 79, nor Laws 1937, c. 435, affect §8569, or any other provisions of marriage law of state, and consent to marriage is required from guardian or parent where female is of full age of 15 years and under 18. Op. Atty. Gen. (300a), May 13, 1937.

(8).

Employment of women and minors in a wholesale nursery is employment in an "occupation." Op. Atty. Gen., Nov. 22, 1933.

Practice of medicine and surgery is a business or occupation coming within this section, and office girls in office of a physician are employees. Op. Atty. Gen. (845c), June 16, 1939.

EMPLOYMENT BUREAUS

4254. State to co-operate with federal government and municipalities in conduct of labor bureaus.

Editorial note.—Power conferred on the industrial commission is transferred to the director of employment and security by Act Apr. 22, 1939, c. 431, Art. 7, §2(11)(d), ante §3199-102(11)(d).

EMPLOYMENT AGENCIES

4254-3. Applicant to file written application.—

Every applicant for a license shall file with the commission a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and shall be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. Said application shall also state whether or not said applicant is at the time of making application, or has at any previous time, been engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this state or any other, and if so, when and where. Said application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commission a schedule of the fees or charges to be collected by such employment agent for any services rendered together with all rules or regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commission. It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commission.

It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, the commission or a majority of the members thereof finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use, or whenever, upon investigation by the commission, it is found and determined, that the number of licensed employment agents or that the employment agency operated by the United States, the state or by the municipality or by two or more thereof jointly in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employees. Any such license granted by the commission may also be revoked by it upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions or provisions of Sections 1 to 18 [Mason's Minn. Stat., 1927, §§4254-1 to 4254-18], inclusive, of this act, or with any lawful orders of the commission, shall be deemed due cause to revoke such license. Provided, however, that no employment agency duly licensed to do business at the time of the passage of this act shall be denied a renewal of his, her or its license or have his, her, or its license revoked on the ground that public necessity does not require such an agency. ('25, c. 347, §3; Apr. 23, 1929, c. 293.)

The industrial commission must issue a license unless reasons for rejecting it, pointed out by the statute, are found to exist. The commission has no power to limit the number of agencies. 173M47, 216NW323.

Attempt to confer power upon industrial commission to deny an applicant right to operate an employment agency upon ground that field is already sufficiently occupied, is a denial of due process and equal protection. Engberg v. D., 194M394, 260NW626. See Dun. Dig. 1610 (4).

MINNESOTA LABOR RELATIONS ACT

4254-21. Definitions.—When used in this act the word or term:

(a) "Person" includes individuals, partnerships, associations, corporation, trustees, and receivers; the singular includes the plural, and the masculine includes the feminine.

(b) "Employer" includes all persons employing others and all persons acting in the interest of an employer, but does not include the state or any political or governmental subdivision thereof, nor any person subject to the Federal Railway Labor Act, as amended from time to time.

(c) "Employee" includes, in addition to the accepted definition of the word, any employee whose work has ceased because of any unfair labor practice as defined in section 12 of this act on the part of the employer or because of any current labor dispute and who has not obtained other regular and substantially equivalent employment, but does not include any individual employed in agricultural labor or by his parent or spouse or in domestic service of any person at his own home.

(d) "Representative of employees" means a labor organization or one or more individuals selected by a group of employees as provided in Section 16 of this act.

(e) "Labor organization" means any organization of employees which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances or terms or conditions of employment.

(f) "Labor dispute" includes, any controversy concerning employment, tenure or conditions or terms of employment or concerning the association or right of representation of persons in negotiating, fixing, maintaining, changing or seeking to arrange terms, tenure, or other conditions of employment, regardless of whether or not the relationship of employer and employee exists as to the disputants.

(g) "Strike" means the temporary stoppage of work by the concerted action of two or more employees as a result of a labor dispute as defined herein.

(h) "Lockout" is the refusal of the employer to furnish work to employees as a result of a labor dispute as defined herein.

(i) "Commission" means the commission of three members which may be appointed by the governor to conduct hearings under this act.

(j) "Unfair labor practice" means any unfair labor practice defined in sections 11 and 12 of this act.

(k) "Competent evidence" means evidence admissible in a court of equity and such other evidence other than hearsay as is relevant and material to the issue and is of such character that it would be accepted by reasonable men as worthy of belief. (Act Apr. 22, 1939, c. 440, §1.)

(b).

Private hospitals are employers, and employees thereof come within act. Op. Atty. Gen. (270), June 29, 1939.

(c).

Nursery employees engaged in cultivation or growing operations are not "employees" under act. Op. Atty. Gen. (270), July 20, 1939.

4254-22. Division of conciliation established—Conciliators—Salary.—There is hereby established in the department of labor and industries a division of conciliation but not in any way subject to the control of said department. Said division shall be under the supervision and control of a labor conciliator who shall be appointed by the governor with the advice and consent of the senate. He shall receive an annual salary of \$4,500 and shall hold office for a term of four years. The term of the first labor conciliator hereunder shall expire March 1, 1945. The governor may from time to time appoint special conciliators to aid in the settlement of particular labor disputes or controversies, and such special conciliators when appointed shall have the same power and authority as the labor conciliator and such appointment shall be for the duration only of the particular dispute. Such special conciliators shall be paid a per diem of \$15.00 per day while so engaged, and their necessary expenses. The labor conciliator shall prepare a roster of persons qualified to act as such special conciliators and keep the same revised at all times and available to the governor and the public.

The labor conciliator may employ and discharge clerks and other assistants, as needed, fix their compensation and assign to them their duties. (Act Apr. 22, 1939, c. 440, §2.)

4254-23. May be removed for political activities.—Any labor conciliator or employee, under the provisions of this act, who exerts his influence, directly or indirectly to induce any other person to adopt his political views, or to favor any particular candidate for office, or to contribute funds for political purposes, shall forthwith be removed from his office or position by the authority appointing him; provided that before removal the labor conciliator shall be entitled to a hearing before the governor, and any other employee shall be entitled to a similar hearing before the labor conciliator. (Act Apr. 22, 1939, c. 440, §3.)

4254-24. Expenses of Conciliator and employees.—The labor conciliator and his employees or any special conciliator shall be paid their actual and necessary traveling and other expenses incurred in the performance of their duties. Vouchers for such expenses shall be itemized and sworn to by the person incurring the expense. (Act Apr. 22, 1939, c. 440, §4.)

4254-25. Conciliator to adopt rules and regulations.—The labor conciliator shall adopt reasonable and proper rules and regulations relative to and regulating the conduct of the hearings. Such rules and regulations shall be printed and made available to the public and a copy delivered with each notice of hearing; provided that every such rule or regulation shall be filed with the secretary of state, and any change

therein or additions thereto shall not take effect until 20 days after such filing. (Act Apr. 22, 1939, c. 440, §5.)

4254-26. Notice to employer—Notice by employer of change in conditions—Notice of intent to strike—Requisites of notices—Conference.—Whenever any representative of employees or labor organization shall desire to negotiate a collective bargaining agreement, or make any change in any existing agreement, or shall desire any changes in the rates of pay, rules or working conditions in any place of employment, it shall give written notice to the employer of its demand, and it shall thereupon be the duty of the employer and the representative of employee or labor organization to endeavor in good faith to reach an agreement respecting such demand. An employer shall give a like notice to his employees, representatives or labor organizations of any intended change in any existing agreement. If no agreement is reached at the expiration of ten (10) days after service of such notice, any employees, representative, labor organization, or employer may give notice of intention to strike or lockout, as the case may be, but it shall be unlawful for any labor organization or representative to institute or aid in the conduct of a strike or for an employer to institute a lockout, unless notice of intention to strike or lockout has been served by the party intending to institute a strike or lockout upon the labor conciliator and the other parties to the labor dispute at least ten (10) days before the strike or lockout is to become effective.

Notice by the employer shall be signed by him or his duly authorized officer or agent; and notice by the employees shall be signed by their representative or its officers, or by the committee selected to conduct the strike. In either case the notice shall be served by delivering it to the labor conciliator in person or by sending it by registered mail addressed to him at his office. The notice shall state briefly the nature of the dispute and the demands of the party who serves it. Upon receipt of a notice, the labor conciliator shall fix a time and place for a conference with the parties to the labor dispute upon the issues involved in the dispute, and he shall then take whatever steps he deems most expedient to bring about a settlement of the dispute, including assisting in negotiating and drafting a settlement agreement. It shall be the duty of all parties to a labor dispute to respond to the summons of the labor conciliator for joint or several conferences with him and to continue in such conference until excused by the labor conciliator, not beyond, however, the ten day period heretofore prescribed except by mutual consent of the parties. (Act Apr. 22, 1939, c. 440, §6.)

Under a collective bargaining agreement between automobile retail salesmen's association and automobile dealers whereby dealers agreed to hire additional salesmen through association and not to employ any other persons, and one of dealers obtained applications for membership in association from only part of its salesmen, others refusing to join, and refused to turn these applications over to association until all salesmen should join association, there was a violation of the agreement by continuing to employ salesmen who were not members of association, and remedies of association are to call a strike or bring suit for damages, but first make a demand for arbitration as provided in agreement. Op. Atty. Gen. (270d-12), May 8, 1939.

4254-27. Business affected with public interest—Notice to governor—Appointment of commission—Delay of strike or lockout.—If the dispute is in any industry, business or institution affected with a public interest, which includes, but is not restricted to, any industry, business or institution engaged in supplying the necessities of life, safety, or health, so that a temporary suspension of its operation would endanger the life, safety, health or well being of a substantial number of people of any community, the provisions of section 6 shall apply and the labor conciliator shall also notify the Governor who may appoint a commission of three, to conduct a hearing and make a report on the issues involved and the merits of the

respective contentions of the parties to the dispute. If the commission is appointed by the Governor, the labor conciliator shall immediately notify the parties to the labor dispute and shall also inform them of the date of the notification to the Governor. The members of such commission shall on account of vocations, employment or affiliations be representative of employees, employers and the public respectively. Such report shall be filed with the Governor and may be published as he may determine in one or more legal newspapers in the counties where the dispute exists. If and when a commission shall be appointed, neither party to the dispute shall make any change in the situation affecting the dispute and no strike or lock-out shall be instituted until the report of the commission shall have been filed or thirty (30) days shall have elapsed after the notification to the Governor. (Act Apr. 22, 1939, c. 440, §7.)

It is duty of conciliator to notify governor as soon as he determines that dispute is affected with public interest, but such notice must be given before expiration of 10 days from time when conciliator has been served with notice, as provided in §6. Op. Atty. Gen. (270), June 19, 1939.

Rules of procedure relating to hearings before commission as prepared by attorney general. Op. Atty. Gen. (270), August 15, 1939.

4254-28. Commission to subpoena witnesses—Contempt—Conciliator may take jurisdiction on request—Appearance.—(a) The commission appointed by the governor pursuant to the provisions of this act shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence which relates to any matter involved in any such hearing, and may by its chairman administer oaths and affirmations, and may examine witnesses. Such attendance of witnesses and the production of such evidence may be required from any place in the state of Minnesota at any designated place of hearing, but hearings shall be held in a county where the labor dispute has arisen or exists.

(b) In case of contumacy or refusal to obey a subpoena issued under subsection (a) of this section, the district court of the state of Minnesota for the county where the proceeding is pending or in which the person guilty of such contumacy or refusal to obey is found, or resides, or transacts business, or application by the commission shall have jurisdiction to issue to such person an order requiring such person to appear before the commission, there to produce evidence as so ordered, or there to give testimony touching 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.

(c) The labor conciliator may take jurisdiction of a labor dispute in which negotiations for settlement have failed if either party to said dispute before a vote to strike or lockout files a petition requesting said conciliator to act in the dispute, setting forth the issues of the dispute and the efforts to agree and the failure to reach an agreement. If the conciliator takes jurisdiction he shall then proceed as otherwise provided in this act.

(d) Any party to or party affected by the dispute may appear before the labor conciliator or the commission in person or by attorney or by their representative, and shall have the right to offer competent evidence and to be heard on the issues before the report is made.

Any commissioners so appointed shall be paid a per diem of \$15.00 per day and their necessary expenses while serving. (Act Apr. 22, 1939, c. 440, §8.)

4254-29. Labor disputes may be submitted to arbitration.—Whenever a labor dispute arises which is not settled by conciliation, such dispute may, by written agreement of the parties, be submitted to arbitration on such terms as the parties may specify, including, among other methods, the arbitration procedure under the terms of Sections 9513 to 9519, inclusive, of Mason's Minnesota Statutes of 1927, and acts amendatory thereof and supplementary thereto, and

arbitration under the Voluntary Industrial Arbitration Tribunal of the American Arbitration Association. If any such agreement so provides, the labor conciliator may act as a member of any arbitration tribunal created by any such agreement, and, if the agreement so provides, the conciliator may appoint one or more of such arbitrators. Either or both of the parties to any such agreement, or any arbitration tribunal created under any such agreement, may apply to the conciliator to have the said tribunal designated as a temporary arbitration tribunal, and if so designated, said temporary arbitration tribunal shall have power to administer oaths to witnesses and to issue subpoenas for the attendance of witnesses and the production of evidence, which subpoenas shall be enforced in the same manner as subpoenas issued by the commission under Section 8 of this act. Any such temporary arbitration tribunal shall file with the conciliator a copy of its report, duly certified by its chairman. (Act Apr. 22, 1939, c. 440, §9.)

There is no authorization for conciliator to pay arbitrators but they must be paid as provided for in §9515. Op. Atty. Gen. (270), June 6, 1939.

4254-30. Employees to have right to join labor organization—Lists or organizations.—(a) Employees shall have the right of self-organization and the right to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in lawful, concerted activities for the purpose of collective bargaining or other mutual aid or protection; and such employees shall also have the right to refrain from any and all of such activities.

(b) Employers shall have the right to associate together for the purpose of collective bargaining.

(c) The conciliator shall maintain a list of labor organizations and employers organizations. A labor organization to be recognized and included in the list by the conciliator must file with him a statement under oath of its name, the name and address of its secretary or other officer to whom notices may be sent, the names and addresses of its business agents, the date of its organization, and its affiliations, if any, with other labor organizations or bodies. An employers' organization to be recognized and included in the list by the conciliator must file with him a statement under oath of its name, the name and address of its secretary or other officer to whom notices may be sent, the names and addresses of its principal agent, the date of its organization, and its affiliations, if any, with other employer organizations or groups. Such information shall be for the use of the conciliator only and shall not be open to public inspection, but the conciliator may furnish such information upon request to the parties to a labor dispute. (Act Apr. 22, 1939, c. 440, §10.)

(a) Section does not prevent closed shop contract. Op. Atty. Gen. (270), August 24, 1939.

4254-31. What are unfair labor practices by employees.—It shall be an unfair labor practice:

(a) For any employe or labor organization to institute a strike if the calling of such strike is a violation of any valid collective agreement between any employer and his employes or labor organization and the employer is, at the time, in good faith complying with the provisions of the agreement.

(b) For any employe or labor organization to institute a strike if the calling of such strike is in violation of sections 6 or 7 of this act.

(c) For any person to seize or occupy property unlawfully during the existence of a labor dispute.

(d) For any person to picket or cause to be picketed a place of employment of which place said person is not an employe while a strike is in progress affecting said place of employment, unless the majority of persons engaged in picketing said place of employment at said times are employes of said place of employment.

(e) For more than one person to picket or cause to be picketed a single entrance to any place of employment where no strike is in progress at the time.

(f) For any person to interfere in any manner with the operation of a vehicle or the operator thereof when neither the owner nor operator of said vehicle is at said time a party to a strike.

(g) For any employe, labor organization or officer, agent or member thereof to compel or attempt to compel any person to join or to refrain from joining any labor organization or any strike against his will by any threatened or actual unlawful interference with his person, immediate family or physical property, or to assault or unlawfully threaten any such person while in pursuit of lawful employment.

(h) The violation of sub-sections (b), (c), (d), (e), (f) and (g) of this section are hereby declared to be unlawful acts. (Act Apr. 22, 1939, c. 440, §11.)

(f).
It makes no difference where owner or employe operator of vehicle resides or whether he is regularly or casually engaged in operating a motor vehicle. Op. Atty. Gen. (270d-7), August 11, 1939.

If neither owner nor operator of a vehicle is a party to a strike, it is unlawful to interfere in any manner with operation of vehicle or operator thereof whether it be upon any of the public streets or highways or upon premises of any business establishment or elsewhere, and such violation is a misdemeanor within meaning of §10047 with punishment prescribed by §9922. Id.

4254-32. What are unfair labor practices by employers.—It shall be an unfair labor practice for an employer:

(a) To institute any lockout of his employes in violation of any valid collective bargaining agreement between the employer and his employes or labor organization if the employes at the time are in good faith complying with the provisions of the agreement.

(b) To institute any lockout of his employes in violation of sections 6 or 7 of this act.

(c) To encourage or discourage membership in any labor organization by discrimination in regard to hire or tenure of employment or any terms or conditions of employment; provided, however, that this subsection shall not apply to the provisions of collective bargaining agreements entered into voluntarily by an employer and his employes or a labor organization representing said employes as a bargaining agent as provided by section 16 of this act.

(d) To discharge or otherwise to discriminate against an employe because he has signed or filed any affidavit, petition or complaint or given any information or testimony under this act.

(e) To spy directly or through agents or any other persons upon any activities of employes or their representatives in the exercise of their legal rights.

(f) To distribute or circulate any blacklist of individuals exercising any legal right or of members of a labor organization for the purpose of preventing individuals so blacklisted from obtaining or retaining employment.

(g) The violation of sub-sections (b), (d), (e) and (f) of this section are hereby declared to be unlawful acts. (Act Apr. 22, 1939, c. 440, §12.)

4254-33. What are unlawful practices.—It shall be unlawful for any person at any time to interfere with the free and uninterrupted use of public roads, streets, highways or methods of transportation or conveyance or to wrongfully obstruct ingress to and egress from any place of business or employment. (Act Apr. 22, 1939, c. 440, §13.)

Interference with loading or unloading at place of business establishment does not constitute a violation unless it obstructs ingress to or egress from place of business or employment. Op. Atty. Gen. (270d-7), August 11, 1939.

4254-34. Suit to enjoin unfair labor practices.—Whenever any unfair labor practice is threatened or committed, a suit to enjoin such practice may be maintained in the district court of any county wherein such practice has occurred or is threatened. In any suit to enjoin any of the unfair labor practices set forth in

Sections 11 and 12 of this act [§§4254-31, 4254-32], the provisions of Mason's Minnesota Statutes, Sections 4257 to 4260 and Mason's Minnesota Statutes, 1938 Supplement, Sections 4256, sections 4260-1 to 4260-15 shall not apply, provided, however, that no court of the state of Minnesota shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of the violation of Sections 11 and 12 of this act as herein defined, except after hearing the testimony of witnesses in open court, with opportunity for cross examination, in support of the allegations made under oath, and testimony in opposition thereto if offered, and except after findings of fact by the court to the effect that the acts set forth in Sections 11 and 12 of this act have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, provided, however, that no temporary restraining order may be issued under the provisions of this act except upon the testimony of witnesses produced by the applicant in open court and upon a record being kept of such testimony. (Act Apr. 22, 1939, c. 440, §14.)

4254-35. Not to be entitled to benefit of act in certain cases.—Any employer, employe or labor organization who has violated any of the provisions of this act with respect to any labor dispute shall not be entitled to any of the benefits of this act respecting such labor disputes and such employer, employes, or labor organization shall not be entitled to maintain in any court of this state an action for injunctive relief with respect to any matters growing out of that labor dispute, until he shall have in good faith made use of all means available under the laws of the state of Minnesota for the peaceable settlement of the dispute. (Act Apr. 22, 1939, c. 440, §15.)

4254-36. Representatives for collective bargaining.—(a) Representatives designated or selected for the purpose of collective bargaining by the majority of the employes in a unit appropriate for such purposes shall be the exclusive representatives of all the employes in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment, provided, that any individual employe or group of employes shall have the right at any time to present grievances to their employer in person or through representatives of their own choosing.

(b) Whenever a question concerning the representative of employes is raised by an employe, group of employes, labor organization, or employer the labor conciliator or any person designated by him shall at the request of any of the parties, investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. The labor conciliator shall decide in each case whether, in order to insure to employes the full benefit of their right to self organization and to collective bargaining, and otherwise to effectuate the purpose of this act, the unit appropriate for the purpose of collective bargaining shall be the employer unit, craft unit, plant unit; provided, however, that any larger unit may be decided upon with the consent of all employers involved, and provided further, however, that when a craft exists, composed of one or more employes then such craft shall constitute a unit appropriate for the purpose of collective bargaining for such employe or employes belonging to said craft and a majority of such employes of said craft may designate a representative for such unit. Two or more units may by voluntary consent, bargain through the same agent or agents with an employer or employers, their agent or agents. Supervisory employes shall not be considered in the selection of a bargaining agent. In any such investigation, the labor conciliator may provide for an appropriate hearing, and may take a secret ballot of employes or utilize any other suitable method to ascertain such

representatives, but the labor conciliator shall not certify any labor organization which is dominated, controlled or maintained by an employer. If the labor conciliator has certified the representatives as herein provided, he shall not be required to again consider the matter for a period of one year unless it appears to him that sufficient reason exists. (Act Apr. 22, 1939, c. 440, §16.)

Where there is a conflict as to certification of bargaining agent between National Labor Board and State Labor Conciliator, state board must yield. Op. Atty. Gen. (270), July 20, 1939.

4254-37. Appropriation.—The sum of \$25,000 is herewith appropriated to be immediately available and for the fiscal year ending June 30, 1940 and the sum of \$15,000 is hereby appropriated for the fiscal year ending June 30, 1941, for the purpose of carrying out the provisions of this act. (Act Apr. 22, 1939, c. 440, §17.)

4254-38. Provisions severable.—If any provision of this act, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Act Apr. 22, 1939, c. 440, §18.)

4254-39. Citation of act.—This act may be cited as the "Minnesota Labor Relations Act". (Act Apr. 22, 1939, c. 440, §19.)

4254-40. Laws repealed.—Subsection (4) of Section 4046, Mason's Minnesota Statutes of 1927 and all acts or portion of acts inconsistent herewith are hereby repealed. (Act Apr. 22, 1939, c. 441, §20.)

INJUNCTIONS AND RESTRAINING ORDERS

4255. Labor organizations declared not unlawful. See §§4260-1 to 4260-15, post. Laws 1933, c. 416, should be construed as supplemental to §§4255 to 4260 and not as repealing any part of those sections. Op. Atty. Gen., May 31, 1933. Validity of state anti-injunction legislation. 33MichLaw Rev777.

Judicial intervention in internal affairs of labor unions. 20MinnLawRev657. Study of judicial attitude toward trade unions and labor legislation. 23MinnLawRev255.

4256. When restraining order or injunction not to be issued.—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, except after notice and a hearing in court and shown to be necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney; provided, that a temporary restraining order may be issued without notice and hearing upon a proper showing that violence is actually being caused or is imminently probable on the part of the person or persons sought to be restrained; and provided that in such restraining order all parties to the action shall be similarly restrained. ('17, c. 493, §2; Apr. 19, 1929, c. 260.)

See §§4260-1 to 4260-15, post. In suit for injunction to restrain defendants from violating plaintiffs' seniority rights as employees of railway, finding is sustained that no such rights were violated by operating Hill Avenue Yard and connected ore dock of defendant railway company under pool agreement with another railway company as modified by Exhibit A, procured through mediation of defendant Brotherhood. *George T. Ross Lodge v. B.*, 191M373, 254 NW590.

There was no error in receiving opinion of experienced officers of brotherhoods as to whether any seniority rights were violated in operating yard and dock, under pool arrangement. Id. See Dun. Dig. 3332.

Separate agreement as to four individual employees of railway, not parties to suit, can have no bearing on controversy wherein certain employees sought by injunction to restrain violation of seniority rights. Id. See Dun. Dig. 3254.

Determination of railroad brotherhoods that no seniority rights of employees were violated by the said modified pooling agreement should be recognized by the courts. Id.

4257 to 4260.

See §§4260-1 to 4260-15, post.

4260-1. Jurisdiction of court limited.—That no court of the State of Minnesota as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act. (Act Apr. 22, 1933, c. 416, §1.)

Constitutional problems raised by our state statute are entirely different from those raised by any federal statute. *Reid v. I.*, 200M599, 275NV300. See Dun. Dig. 9674.

Pleadings and affidavits held to show presence of a "labor dispute." *Lichterman v. L.*, 204M75, 283NW752. See Dun. Dig. 4478b.

This act should be construed as being supplemental to Mason's Stats., §§4255 to 4260. Op. Atty. Gen., May 31, 1933.

Judicial intervention in internal affairs of labor unions. 20MinnLawRev657.

Minnesota labor disputes injunction act. 21MinnLaw Rev619.

Applicability of Norris-LaGuardia Act to inter-union disputes for recognition under National Labor Relations Act. 23MinnLawRev393.

Labor dispute as defined by anti-injunction act. 23 MinnLawRev549.

4260-2. Public policy declared.—In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the State of Minnesota, as such jurisdiction and authority are herein defined and limited, the public policy of this state is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the State of Minnesota are hereby enacted. (Act Apr. 22, 1933, c. 416, §2.)

4260-3. Certain acts not enforceable.—Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the State of Minnesota, shall not be enforceable in any court of this state and shall not afford any basis for the granting of legal or equitable relief by any court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or re-

main a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. (Act Apr. 22, 1933, c. 416, §3.)

4260-4. Court may not issue restraining orders in certain cases.—No court of the State of Minnesota shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act;

(c) Paying or giving to, or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of this state.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act. (Act Apr. 22, 1933, c. 416, §4.)

A claim for damages for past breach of contract is not a "labor dispute," and an injunction to prohibit picketing to force a settlement is not forbidden. *Jansen v. S.*, 194M58, 259NW811. See Dun. Dig. 9674.

4260-5. Same.—No court of the State of Minnesota shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the Acts enumerated in section 4 of this Act. (Act Apr. 22, 1933, c. 416, §5.)

4260-6. Associations not to be responsible for acts of individuals.—No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the State of Minnesota for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. (Act Apr. 22, 1933, c. 416, §6.)

4260-7. Jurisdiction of court in certain cases.—No court of the State of Minnesota shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act for actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property have failed to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective until hearing and decision on the petition for a temporary injunction unless theretofore revoked by the court, which hearing shall be held within ten days after issuance of a temporary restraining order unless defendants ask for additional time, provided that any temporary restraining order so issued shall become void at the expiration of said period of 10 days, unless renewed. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. (Act Apr. 22, 1933, c. 416, §7.)

Bill to enjoin minority of plaintiff's employees from interfering by violence or intimidation with contracts made between plaintiff and designated representatives of majority of his employees, does not present a substantial federal question within jurisdiction of a federal court where federal labor relations board has taken no action in matter, and hence court cannot retain cause to grant relief under local law. *Lund v. W.*, (USDC-Minn), 19FSupp607.

If injunction suit be erroneously decided and, without findings of fact, an injunction issues upon ground that no labor dispute is presented, decision, even though erroneous, is not subject to collateral attack in proceedings to punish a violator for contempt. *Reid v. I.*, 200M 599, 275NW300. See Dun. Dig. 4504.

(e).

A judgment of voluntary dismissal by agreement of parties to action in which a restraining order has been issued is not an adjudication that restraining order was improvidently or erroneously issued. *American Gas Mach. Co. v. V.*, 204M209, 283NW114. See Dun. Dig. 4499.

4260-8. Same.—No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. (Act Apr. 22, 1933, c. 416, §8.)

4260-9. Court to certify proceedings to Supreme Court.—Whenever any court of the State of Minnesota shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the Supreme Court for its review. Upon the filing of such record in the Supreme Court, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. (Act Apr. 22, 1933, c. 416, §9.)

In certiorari to review conviction for contempt in violating a temporary injunction, latter is under collateral attack which must fail unless injunction is shown to be a nullity. *Reid v. L.*, 200M599, 275NW300. See Dun. Dig. 4504.

4260-10. Right to speedy trial.—In all cases arising under this Act in which a person shall be charged with contempt in a court of the State of Minnesota (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county and district wherein the contempt shall have been committed. Provided, that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. (Act Apr. 22, 1933, c. 416, §10.)

4260-11. Proceedings in contempt cases.—The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding. (Act Apr. 22, 1933, c. 416, §11.)

4260-12. Definitions.—When used in this Act and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry trade, craft or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more em-

ployers or associations of employers; or (3) between one or more employees or associations of employees and one or more employers or associations of employees or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the State of Minnesota" means any court of the State of Minnesota whose jurisdiction has been or may be conferred or defined or limited by Act of Legislature. (Act Apr. 22, 1933, c. 416, §12.)

What constitutes a labor dispute is a mixed question of law and fact. *Reid v. L.*, 200M599, 275NW300. See Dun. Dig. 9674.

A labor dispute is presented in action of employer against labor union which threatens to resort to picketing because of employer's proposal to reduce prices charged his customers and thereby lessen compensation of numerous employees working on commission, though issue is not between employer and his own employees. *Lichterman v. L.*, 204M75, 282NW689. See Dun. Dig. 4478b.

This section had no application to picketing of home of employer who discharged chauffeur and houseman, there being no "labor dispute," and picket was properly convicted of disorderly conduct under city ordinance. *State v. Cooper*, 285NW903. See Dun. Dig. 9674.

(e) A claim for damages for past breach of contract is not a "labor dispute," and an injunction to prohibit picketing to force a settlement is not forbidden. *Jensen v. S.*, 194M58, 259NW811. See Dun. Dig. 9674.

4260-13. Provisions separable.—If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby. (Act Apr. 22, 1933, c. 416, §13.)

4260-14 Inconsistent acts repealed.—All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. (Act Apr. 22, 1933, c. 416, §14.)

4260-15. Application.—This Act shall not be held to apply to policemen or firemen or any other public officials charged with duties relating to public safety. (Act Apr. 22, 1933, c. 416, §15.)

4260-21. Injunctions between employers in labor disputes.—Whenever any group of employers of labor, residing or operating in this state, have, by written agreement between themselves, agreed upon certain minimum wages to be paid to their employees, hours of labor, and/or other conditions of employment, and such agreement is wilfully violated, then, in that event, any one or more of such employers, parties to the agreement, may, by an appropriate action in a district court, make application for a restraining order, and/or temporary injunction, and/or permanent injunction, against the party or parties so violating said agreement, to restrain the violation thereof as to the minimum wages, hours of labor and the other conditions of employment specified in said agreement, and proof of wilful violation of said agreement in respect to any or either thereof, shall be sufficient grounds for the issuance of such restraining

order and/or temporary injunction and/or permanent injunction. (Act Apr. 24, 1935, c. 292, §1.)

4260-22. Limitation of act.—This act shall not apply to actions to enjoin the violation of open or closed shop agreements nor to actions to enjoin the violation of agreements or so-called codes of fair competition made or established pursuant to any state or Federal law. (Act Apr. 24, 1935, c. 292, §2.)

4260-23. Application of act.—The provisions of Laws 1933, Chapter 416 [§§4260-1 to 4260-15], shall not apply to actions or proceedings to which this act applies. (Act Apr. 24, 1935, c. 292, §3.)

APPRENTICES

4260-31. Purpose of act.—The purposes of this act are: to open to young people the opportunity to obtain training that will equip them for profitable employment and citizenship; to set up, as a means to this end, a program of voluntary apprenticeship under approved apprentice agreements providing facilities for their training and guidance in the arts and crafts of industry and trade, with parallel instruction in related and supplementary education; to promote employment opportunities for young people under conditions providing adequate training and reasonable earnings; to relate the supply of skilled workers to employment demands; to establish standards for apprentice training; to establish an apprenticeship council and local and state joint apprenticeship committees to assist in effectuating the purposes of this act; to provide for a director of apprenticeship within the department of labor and industry; to provide for reports to the legislature and to the public regarding the status of apprentice training in the state; to establish a procedure for the determination of apprentice agreement controversies; and to accomplish related ends. (Act Apr. 20, 1939, c. 363, §1.)

4260-32. Industrial commission to appoint apprenticeship council — Members — Duties — Meetings — Standards—Reports.—Subdivision 1. The Industrial Commission of Minnesota, hereinafter called the commission, shall appoint an apprenticeship council, composed of three representatives each from employer and employee organizations respectively, and of two representatives of the general public. The state official who has been designated by the state board for vocational education as being in charge of trade and industrial education shall ex officio be a member of said council. The terms of office of the members of the apprenticeship council first appointed by the commission shall expire as designated by the commission at the time of making the appointment: One representative each of employers, employees, and the public being appointed for one year, one representative each of employers, employees, and the public being appointed for two years, and one representative each of employers and employees for three years. Thereafter, each member shall be appointed for a term of three years. Any member appointed to fill a vacancy occurring prior to the expiration of the term of his predecessor shall be appointed for the remainder of said term.

Subdivision 2. The apprenticeship council shall meet at the call of the commission and shall aid it in formulating policies for the effective administration of this act. Subject to the approval of the commission, the apprenticeship council shall establish standards for apprentice agreements which in no case shall be lower than those prescribed by this act, shall issue such rules and regulations as may be necessary to carry out the intent and purposes of said act, and shall perform such other functions as the commission may direct. Not less than once every two years the apprenticeship council shall make a report through the commission of labor and industry of its activities and findings to the legislature and to the public. (Act Apr. 20, 1939, c. 363, §2.)

4260-33. Commission to appoint director of apprenticeship and assistants.—The commission is hereby directed to appoint a director of apprenticeship, which appointment shall be subject to the confirmation of the state apprenticeship council by a majority vote. The commission is further authorized to appoint and employ such clerical, technical, and professional help as shall be necessary to effectuate the purposes of this act. (Act Apr. 20, 1939, c. 363, §3.)

4260-34. Director and council to administer act.—The director, under the supervision of the commission and with the advice and guidance of the apprenticeship council, is authorized to administer the provisions of this act; in cooperation with the apprenticeship council and local and state joint apprenticeship committees, to set up conditions and training standards for apprentice agreements, which conditions or standards shall in no case be lower than those prescribed by this act; to act as secretary of the apprenticeship council and of such state joint apprenticeship committee; to approve, if in his opinion approval is for the best interest of the apprentice, any apprentice agreement which meets the standards established under this act; to terminate or cancel any apprentice agreement in accordance with the provisions of such agreement; to keep a record of apprentice agreements and their disposition; to issue certificates of completion of apprenticeship; and to perform such other duties as are necessary to carry out the intent of this act; provided, that the administration and supervision of related and supplemental instruction for apprentices, coordination of instruction with job experiences, and the selection and training of teachers and coordinators for such instruction shall be the responsibility of state and local boards responsible for vocational education. (Act Apr. 20, 1939, c. 363, §4.)

4260-35. Local and state committees to be appointed.—Local and state joint apprenticeship committees shall be appointed, in any trade by the apprenticeship council, whenever the apprentice training needs of such trade justifies such establishment. (Act Apr. 20, 1939, c. 363, §5.)

4260-36. Who are apprentices.—The term "apprentice" as used herein, shall mean a person at least 16 years of age who has entered into a written agreement, hereinafter called an apprentice agreement, with an employer, an association of employers, or an organization of employees, which apprentice agreement provides for not less than 4,000 hours of reasonably continuous employment for such person and for his participation in an approved program of training through employment and through education in related and supplemental subjects. (Act Apr. 20, 1939, c. 363, §6.)

4260-37. Apprentice agreements—Contents.—Every apprentice agreement entered into under this act shall contain:

- (1) The names of the contracting parties.
- (2) The date of birth of the apprentice.
- (3) A statement of the trade, craft, or business which the apprentice is to be taught, and the time at which the apprenticeship will begin and end.
- (4) A statement showing the number of hours to be spent by the apprentice in work and the number of hours to be spent in related and supplemental instruction, which instruction shall be not less than 144 hours per year. Provided, that in no case shall the combined weekly hours of work and of required related and supplemental instruction of the apprentice exceed the maximum number of hours of work prescribed by law for a person of the age and sex of the apprentice.
- (5) A statement setting forth a schedule of the processes in the trade or industry divisions in which the apprentice is to be taught and the approximate time to be spent at each process.

(6) A statement of the graduated scale of wages to be paid the apprentice and whether the required school time shall be compensated.

(7) A statement providing for a period of probation of not more than 500 hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the director by mutual agreement of all parties thereto, or cancelled by the director for good and sufficient reason.

(8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally shall be submitted to the director for determination as provided for in section nine.

(9) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may with the approval of the director transfer such contract to any other employer, provided, that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.

(10) Such additional terms and conditions as may be prescribed or approved by the director not inconsistent with the provisions of this act. (Act Apr. 20, 1939, c. 363, §7.)

4260-38. To be approved by director.—No apprentice agreement under this act shall be effective until approved by the director. Every apprentice agreement shall be signed by the employer, or by an association of employers or an organization of employees and by the apprentice, and if the apprentice is a minor, by the minor's father; provided, that if the father be dead or legally incapable of giving consent or has abandoned his family then by the minor's mother; if both father and mother be dead or legally incapable of giving consent, then by the guardian of the minor. Where a minor enters into an apprentice agreement under this act for a period of training extending into his majority, the apprentice agreement shall likewise be binding for such a period as may be covered during the apprentice's majority. (Act Apr. 20, 1939, c. 363, §8.)

4260-39. Investigations by director—Appeals.—Subdivision 1. Upon the complaint of any interested person or upon his own initiative, the director may investigate to determine if there has been a violation of the terms of an apprentice agreement, made under this act, and he may hold hearings, inquiries, and other proceedings necessary to such investigation and determination. The parties to such agreement shall be given a fair and impartial hearing, after reasonable notice thereof. All such hearings, investigations and determinations shall be made under authority of reasonable rules and procedures prescribed by the apprenticeship council, subject to the approval of the commission.

Subdivision 2. The determination of the director shall be filed with the commission. If no appeal therefrom is filed with the commission within ten days after the date thereof, as herein provided, such determination shall become the order of the commission. Any person aggrieved by any determination or action of the director, may appeal therefrom to the commission, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved or affected by any determination or order of the commission, may appeal therefrom to the district court having jurisdiction, at any time within 30 days after the date of such order by service of a written notice of appeal on said commission, or its secretary. Upon service of said notice of appeal, said commis-

sion, by its secretary, shall forthwith file, with the clerk of said district court to which said appeal is taken, a certified copy of the order appealed from, together with findings of fact on which the same is based. The person serving such notice of appeal shall, within five days after the service thereof, file the same with proof of service, with the clerk of the court to which such appeal is taken; and thereupon said district court shall have jurisdiction over said appeal, and the same shall be entered upon the records of said district court and shall be tried therein de novo according to the rules relating to the trial of civil actions, so far as the same are applicable. Any person aggrieved or affected by any determination, order or decision of the district court may appeal therefrom to the supreme court in the same manner as provided by law for the appeal of civil action. (Act Apr. 20, 1939, c. 363, §9.)

There is no section 10 in the act.

4260-41. Inapplicable to apprenticeships created by state board of control.—The provisions of this act shall have no application to those infants who are apprenticed by the state board of control pursuant to Mason's Minnesota Statutes of 1927, Sections 4472, 4473 and 4621. (Act Apr. 20, 1939, c. 363, §11.)

4260-42. Provisions severable.—If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of the act, and the application of such provision to other person and circumstances, shall not be affected thereby. (Act Apr. 20, 1939, c. 363, §12.)

COMMON LAW DECISIONS RELATING TO TRADE UNIONS IN GENERAL

1. Rank and seniority.

A rule, which provides that a fireman who falls in his third examination for promotion to the position of engineer "shall be assigned and rank as the oldest extra fireman on the seniority district at the time he falls," reranks such fireman on list as if he had originally come into service as of a date prior to senior on extra board and junior to lowest man on regular runs. *Casey v. B.*, 197M189, 266NW737. See Dun. Dig. 9674.

In action by employee of railroad for damages for breach of contract of employment made in his behalf by shop craft organization, court did not err in granting defendant's motion for a directed verdict because of lack of proof of a breach. *Florestano v. N.*, 198M203, 269NW407. See Dun. Dig. 9674.

2. Remedies of members.

Provisions of the constitution of a voluntary nonprofit labor organization, requiring as a condition precedent to a resort to the courts, in any matter in which a member thereof feels aggrieved by the action of the organization or its officers, that such member first exhaust all remedies open to him within the organization, are valid, if the remedies so provided are reasonable. *Skrivanek v. B.*, 198M141, 269NW111. See Dun. Dig. 4834.

3. Public employees.

Minneapolis Board of Education has no legal right to delegate its discretionary power to an arbitration committee in a labor dispute, but may appoint a committee to confer with a labor union to make proposals of adjustment. *Op. Atty. Gen.* (270d-9), March 23, 1939.

School janitors have right to unionize and to strike, subject to consequences accruing from violation of their contracts of employment and to loss of any civil service rights. *Id.*

4. Picketing.

A "home" is not an industrial or a business enterprise which may be picketed by a discharged employee; nor is it acquired or maintained for pecuniary gain or profit; but is, rather, an institution used and maintained as a place of abode (Divided court.) *State v. Cooper*, 285 NW903. See Dun. Dig. 9674.

An enterprise not conducted as a means of livelihood, or for profit, does not come within the ordinary meaning of such terms as "business," "trade," or "industry." (Divided court.) *Id.* See Dun. Dig. 9674.

CHAPTER 23A

Workmen's Compensation Act

PART I

COMPENSATION BY ACTION AT LAW—
MODIFICATION OF REMEDIES**4261. Injury or death of employe. [Repealed.]**

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, §4272-10, post.

1. In general.

See also notes under §4326.
174M359, 219NW292; 174M362, 219NW293; 174M491, 219NW869.

Liberal construction of law 174M227, 218NW882; 177M503, 225NW428.

Evidence sustains finding that employe sustained an accidental injury from which a sarcoma resulting in his death developed and that the injury was the cause of his death. *Hertz v. W.*, 184M1, 237NW610. See Dun. Dig. 10396.

Death of employe in automobile of another employe at railroad crossing while on way to work, held not compensable. *Kelley v. N.*, 190M291, 251NW274. See Dun. Dig. 10403, 10405.

Evidence supports finding that burns on face and hands caused combined degeneration of the spinal cord. *Sorenson v. L.*, 190M406, 251NW901. See Dun. Dig. 10410.

Compensation act should receive a broad and liberal construction in interest of workman to carry out its policy. *Nyberg v. L.*, 192M404, 256NW732. See Dun. Dig. 10385.

Death of city fireman, accidentally killed while working under orders of his chief, in attempted rescue of men asphyxiated in a well just outside city limits, held to have been due to accident arising out of and in course of his employment. *Grym v. C.*, 193M62, 257NW661. See Dun. Dig. 10404.

Act is to be liberally construed. *Keegan v. K.*, 194M261, 260NW318. See Dun. Dig. 10385.

Compensation is not founded upon negligence, and no question of negligence arises unless it be claimed that injury was caused by willful negligence of employe. *Lewis v. C.*, 196M108, 264NW581. See Dun. Dig. 10396.

Decedent's death caused by poison gas used in fumigating mill where he was employed held not to arise out of and in the course of his employment because he violated his employer's instructions in entering mill. *Anderson v. R.*, 196M358, 267NW501. See Dun. Dig. 10400.

In action for damages for pulmonary tuberculosis alleged to have been contracted while in defendant's employ though violation of §§4172, 4173, 4174, 4176, court properly ordered judgment for defendant because cause of condition was wholly within field of speculation and conjecture. *O'Connor v. P.*, 197M534, 267NW507. See Dun. Dig. 5869.

Law in force at time accident occurred, resulting in death and right to compensation, determines rights of parties. *Herzog v. C.*, 199M352, 272NW174. See Dun. Dig. 10388.

Substantive rights of parties are fixed by statutes in force at time of accident out of which liability arises. *Schmah v. S.*, 274NW168. See Dun. Dig. 10388.

Statute is a substitute for common law on subject which it covers and so far as it goes, but it does not affect rights and wrongs not within its purview or which by implication or express negation are excluded. *Rosenfeld v. M.*, 201M113, 275NW698. See Dun. Dig. 10385.

Where an injury does not fall within act, the common-law remedy is not affected by it. *Id.*

Act does not take away common law right of action of employer to recover from employe for injuries received by employer as a result of negligence of employe in driving automobile in course of his employment. *Id.*

One is not taken out of scope of act by disobedience of one of many safety regulations. *Sentieri v. O.*, 201M293, 276NW210. See Dun. Dig. 10400.

Covers only those who stand in relation of employer and employe. *Jackson v. C.*, 201M526, 277NW22. See Dun. Dig. 10385.

Act is constitutional. *Ruud v. M.*, 202M480, 279NW224. See Dun. Dig. 10383.

Act applies only to personal injuries and not to property damage. *Wicklund v. N.*, 287NW7. See Dun. Dig. 10396.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employe of right of election. *Op. Atty. Gen.* (523a-13), Dec. 18, 1934. Conflict of laws. 20MinnLawRev19.

Occupational diseases. 22MinnLawRev77.

2. Accident.

See notes under §4326.

3. Arising out of and in the course of employment.

See notes under §4326.

4262 to 4267. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, §4272-10, post.

A servant who unnecessarily exposes himself to the hazards of flying particles of rock which result from the unloading of large rocks upon other rocks by a derrick equipped with a grappling contrivance, assumes the risk of injury as a matter of law. *Wickman v. P.*, 184M431, 238NW888. See Dun. Dig. 5974.

Evidence held to support finding that employe removing tire from rim was not guilty of violating explicit orders of his employer in using tools with which he was injured. *Chamberlain v. T.*, 198M274, 269NW525. See Dun. Dig. 10400.

Annotations under §4263.

Where employe is injured from defect in a simple tool, an employer not under the Workmen's Compensation Act has no need of the defenses of which he is deprived by that act. *Hedicke v. H.*, 185M79, 239NW896. See Dun. Dig. 5888.

Annotations under §4267.

Wegersley v. M., 184M393, 238NW792.
Attorney fees cannot be collected out of award unless approved by commission. 180M388, 231NW193.

PART II

ELECTIVE COMPENSATION

4268. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, §4272-10.

Cited without application. 172M178, 215NW204.

1. In general.

Persons subject to and within the terms of the Wisconsin Workmen's Compensation Act are confined to it for their remedy. 176M592, 224NW247.

Finding that bank officer on a "good will tour" was not acting within the scope of his employment, sustained. *Quast v. S.*, 184M329, 238NW677. See Dun. Dig. 10394.

Finding that one cleaning and painting smokestack for specified amount was employe, sustained. *Fuller v. N.*, 248NW756. See Dun. Dig. 10395(65).

Injuries of an employe cannot be classified under both §4268 and §4327. *Clark v. B.*, 195M44, 261NW596. See Dun. Dig. 10398.

One, otherwise an employe of a township, is not deprived of right to compensation because, at time of injury, he happened to be working out relief theretofore furnished by him by government agencies. *Cristello v. T.*, 195M264, 262NW632. See Dun. Dig. 10394.

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter the tools, was an employe or an independent contractor, held question of fact for industrial commission. *Rick v. N.*, 196M185, 264NW685. See Dun. Dig. 10395.

An employe engaged in maintenance and upkeep of a home and whose duties include care of gardens, lawns, and like things, as well as miscellaneous duties of a caretaker, is a domestic servant. *Anderson v. U.*, 197M518, 267NW517, 927. See Dun. Dig. 10394.

Section excludes both domestic servants and persons whose employment is casual, and domestic servants' employment need not be casual. *Id.*

True test of domestic service is nature of employment and its relation to home, and it is not material that servant's wages are paid by another than one who uses premises as a home. *Id.*

Conflict of laws. 20MinnLawRev19.

2. Farm laborers.

One employed to milk, and take care of barns on dairy farm, conducted principally for supplying the dairy products and vegetables consumed by the students at a college owned and conducted by the employer, is a farm laborer. 176M100, 222NW525.

Employe in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 177M503, 225NW428.

Employe of commercial thresherman and cornshredder, held not a "farm laborer," though operating silo filler at time of injury. 178M512, 227NW661.

Neither task on which workman is engaged at moment of injury, nor place where it is being performed is test of whether he is "farm laborer," and carpenter repairing buildings on farm owned by bank was not a "farm laborer." 180M40, 230NW124.

In determining whether a workman is a farm laborer, nature of employment is test rather than particular item of work he is doing when injured. *Hebranson v. F.*, 187M260, 245NW138.

Finding that one working on farm owned by creamery corporation was "farm laborer," sustained. *Hebranson v. F.*, 187M260, 245NW138. See Dun. Dig. 10394.

Farmer electing to come under compensation act, held within such act at time of injury to one caring for sheep. *Wilson v. T.*, 188M97, 246NW542. See Dun. Dig. 10389.

2½. Domestic servants.

Local undergraduate chapter of a national sorority held not liable for compensation, injured employee having been at time of injury engaged in domestic service. *Fingerson v. A.*, 197M378, 267NW212. See Dun. Dig. 10394.

3. Casual employment.—See note under § 4326.

Child of one in charge of store was not an employe while volunteering brief and uncompensated service in the store. 175M579, 222NW275.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs on the houses. *Billmayer v. S.*, 177M465, 225NW426.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." *Billmayer v. S.*, 177M465, 225NW426.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs. *Billmayer v. S.*, 177M465, 225NW426.

Though interior decorating for an insurance company was casual work, still it was "in the usual course of the trade, business, profession, or occupation of the employe." *Cardinal v. P.*, 186M534, 243NW706. See Dun. Dig. 10404.

To be excluded from compensation on ground that employment was casual, employment must be both casual and not in usual course of business. *Ostlie v. D.*, 189M34, 248NW283. See Dun. Dig. 10394(50).

Work of installing electric wiring in apartment on second floor of building held not in usual course of employer's business. *Id.*

Property man in circus was "employe" of fraternal organization operating circus for one week, but his employment was "casual" and not in usual course of business. *Houser v. O.*, 189M239, 248NW327. See Dun. Dig. 10394(50).

Cutting of timber, part of which farmer turned over to son in payment of obligation held casual and incidental to his farming. *Hagelstad v. U.*, 190M513, 252NW430. See Dun. Dig. 10394, 10404.

To exclude an employe from compensation act, two facts must exist, employment must be casual and not in usual course of business of employer. *Id.*

To be excluded from act, it must appear that employment was both casual and not in usual course of trade, business, professional, or occupation of employer. *Colosimo v. G.*, 199M600, 273NW632. See Dun. Dig. 10394(50).

Employment by husband of owner of building of one to assist in repairing building, part of which was to be used as dwelling and part as a beer tavern to be operated by husband was casual, but in usual course of trade, business profession or occupation of employers. *Id.*

Several persons owning a part of two buildings under a will and holding remainder as trustees held not engaged in "business." *Jackson v. C.*, 201M526, 277NW22. See Dun. Dig. 10393.

Compensation Act does not apply to persons whose employment is casual and not in usual course of trade, business, profession, or occupation of employer. *Id.* See Dun. Dig. 10394.

4269. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, § 4272-10.

1. In general.

Green v. C., 189M627, 250NW679; note under § 4326.

The Compensation Act is contractual in the sense that neither employer nor employe is obliged to accept its provisions nor is bound by them unless he agrees to be so. 175M161, 220NW421.

Commission could not find accident "intentionally self-inflicted" because employe violated rule with respect to reporting slightest accidental injury. *Clausen v. M.*, 186M80, 242NW397. See Dun. Dig. 10399.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. *Clausen v. M.*, 186M80, 242NW397. See Dun. Dig. 10420.

Finding that death following heat stroke arose out of employment sustained. *Pearson v. F.*, 186M155, 242NW721. See Dun. Dig. 10404.

Compensation is legal indebtedness upon which interest accrues from date each installment should have been made. *Brown v. C.*, 186M540, 245NW145. See Dun. Dig. 4879, 10413.

Finding that injury to office manager from accidental discharge of gun in another building did not arise out of employment, was sustained. *Auman v. B.*, 188M256, 246NW389. See Dun. Dig. 10405.

Industrial commission on appeal from referee should have considered settlement agreement by which employe released claim to doubtful injury. *Worwa v. M.*, 192M177, 255NW250. See Dun. Dig. 10423.

An agreement between an injured employe and his employer, to pay employe same wage weekly he was earning before injury, regardless of his ability to work, and employe to pay over to employer weekly compensation paid by latter's insurer, is not prohibited by statute nor against public policy; but it is invalid where its effect is to lessen employe's compensation prescribed

by Workmen's Compensation Act. *Ruehmann v. C.*, 192M596, 257NW501. See Dun. Dig. 10418.

In action by employe to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. *Id.*

When employer and employe consent to come under compensation act, statute becomes part of employment contract. *Lewis v. C.*, 196M108, 264NW581. See Dun. Dig. 10385.

Failure to follow one of many safety rules and instructions necessarily imposed upon an underground miner using explosives may be referable to his negligence. *Sentieri v. O.*, 201M293, 276NW210. See Dun. Dig. 10400.

2. Intoxication.

Evidence held insufficient to show that intoxication of employe was the natural cause of his injury. *Kopp et al. v. B.*, 179M170, 228NW559.

4. Presumption against suicide.

Circumstances attending death from explosives of an underground miner justified finding that death resulted from accident arising out of and in course of employment, and did not compel a finding of suicide. *Sentieri v. O.*, 201M293, 276NW210. See Dun. Dig. 10399.

Dependent had burden of proving that death was caused by accident arising out of and in course of employment, and if evidence adduced indicted self-destruction on part of employe, the presumption against suicide disappeared, and it was for commission to find as a fact whether death was caused from an accident arising out of and in course of employment. *Id.* See Dun. Dig. 10406.

4270. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, post, § 4272-10.

Act does not take away common law right of action of employer to recover from employe for injuries received by employer as a result of negligence of employe in driving automobile in course of his employment. *Rosenfield v. M.*, 201M113, 275NW698. See Dun. Dig. 10386.

Where it appears in action by employe for personal injuries that accident arose out of and in course of employment within Workmen's Compensation Act, district court is without any jurisdiction to grant relief. *Gehrke v. W.*, 204M445, 284NW434. See Dun. Dig. 10425(98).

4271. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, § 10, post, § 4272-10.

Workmen's Compensation Act establishes a contractual relationship between the employer, insurer and employe, and obligations cannot be changed by legislation subsequent to a husband's death. *Warner v. Z.*, 184M598, 239NW761. See Dun. Dig. 10388(24), 10391.

Farmer electing to come under compensation act, held within such act at time of injury to one caring for sheep. *Wilson v. T.*, 188M97, 246NW542. See Dun. Dig. 10394.

A substitution of employer cannot be made without knowledge or consent of employees. *Yoselowitz v. P.*, 201M600, 277NW221. See Dun. Dig. 10395.

Chapter 64 of Laws 1937 does not abrogate an employe's election not to be bound by the Workmen's Compensation Act made prior to its enactment. *Schuler v. S.*, 204M456, 283NW731. See Dun. Dig. 10389.

Question whether city employe may be bound by election not to be bound by terms of act, discussed. *Op. Atty. Gen.*, Aug. 17, 1932.

Persons employed by city may not make an agreement to waive compensation for injuries sustained on account of their physical disability or otherwise. *Op. Atty. Gen.*, Aug. 17, 1932.

Neither state, county, village, borough, town, city nor school district may elect not to be bound by Part 2 of compensation act. *Op. Atty. Gen.*, Oct. 16, 1933.

Teacher cannot waive her legal right to compensation in her contract of employment. *Op. Atty. Gen.*, Mar. 19, 1934.

An employe of a municipality or other subdivision of the state may elect not to be bound in a written contract of employment to that effect or by giving statutory notice, but if municipality requires such election by employe, it might constitute duress. *Op. Atty. Gen.* (523g-18), May 31, 1934.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employe of right of election. *Op. Atty. Gen.* (523a-13), Dec. 18, 1934.

Elections of employers or employees did not become void automatically on passage of Laws 1937, c. 64. *Op. Atty. Gen.* (523a-17), June 7, 1937.

4272. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, § 10, post, § 4272-10.

A farmer who, by posting notice and filing a duplicate thereof with industrial commission, has elected to come under Workmen's Compensation Act, can come from under it only by giving written notice and filing proof thereof with commission, and he does not take himself

from under act by merely failing to keep posted notice by which he elected to come under same. *Margoles v. S.*, 191M358, 254NW457. See Dun. Dig. 10389.

4272-1. Employer's right to elect abolished.—The right of an employer and employe, as it has heretofore existed under section 4271, Mason's Minnesota Statutes, 1927, to elect not to be bound by the Workmen's Compensation Act is hereby abolished as to all contracts made after the effective date of this Act except professional baseball players under contract for hire which contract gives compensation equal to or greater than that provided by the Workmen's Compensation Act provided the professional baseball club and the professional baseball player file with the Industrial Commission a written consent signed by both parties not to be bound by the Workmen's Compensation Statutes and the same approved by the Industrial Commission. On and after the effective date of this Act all employers and employes, except those excluded by Section 4 hereof, and those professional baseball players who have elected not to be bound by this Act as hereinbefore set forth, shall be subject to the provisions of the Workmen's Compensation Law, and every such employer shall be liable for compensation, medical and other benefits according to the schedules of the Workmen's Compensation Law, and all acts amendatory thereof and supplementary thereto, and shall pay compensation in every case of personal injury or death of his employe, caused by accident arising out of and in the course of the employe's employment, without regard to the question of negligence, except injury or death which is intentionally self-inflicted or when the intoxication of such employe is the natural or proximate cause of the injury, and the burden of proof of such fact shall be upon the employer. The liability herein imposed upon the employer shall extend to and bind those conducting the employer's business during bankruptcy, insolvency or assignment for the benefit of creditors. It is hereby made the duty of all employers to commence payment of compensation at the time and in the manner prescribed by the Workmen's Compensation Law without the necessity of any agreement or order of the Industrial Commission, payments to be made at the intervals when the wage was payable as nearly as may be. No agreement by any employe or dependent whether made before or after the injury or death to take as compensation an amount less than that prescribed by law shall be valid. (Mar. 12, 1937, c. 64, §1; Apr. 15, 1939, c. 265, §1.)

Sec. 2 of Act Apr. 15, 1939, provides that the act shall take effect at its passage.

Act does not abrogate an employee's election not to be bound by the Workmen's Compensation Act made prior to its enactment. *Schuler v. S.*, 204M456, 283NW781. See Dun. Dig. 10389.

Since *Sunny Rest Sanatorium* is owned and operated by Polk and Norman Counties, an election not to come under the act was of no effect. *Op. Atty. Gen.* (556a), August 9, 1939.

4272-2. All employers shall be insured—exceptions.—Every employer except the state and the municipal subdivisions thereof liable under this Act to pay compensation shall insure payment of such compensation with some insurance carrier authorized to insure such liability in this state or obtain an order from the Industrial Commission exempting him from insuring his liability for compensation and permitting him to self-insure such liability in the manner hereinafter set forth; provided that nothing herein contained shall prevent any employer with the approval of the Industrial Commission from excluding medical and hospital benefits as required in Section 4279, Mason's Minnesota Statutes of 1927; provided, also, that an employer conducting distinct operations or establishments at different locations may either insure or self-insure such other portion of his operations which may be determined by the Industrial Commission to be a distinct and separate risk. An employer desiring to be exempted from insuring his liability for compensation shall make application to the Industrial Commission,

showing his financial ability to pay such compensation, whereupon the Commission by written order may make such exemption as it deems proper. The Commission may, from time to time, require further statement of financial ability of such employer to pay compensation, and may upon ten days' notice in writing revoke its order granting such exemption, in which event such employer shall immediately insure his liability. As a condition for the granting of an exemption the Industrial Commission shall have authority to require the employer to furnish such security as it may consider sufficient to insure payment of all claims under compensation. Where the security is in the form of a bond or other personal guaranty, the Industrial Commission may, at any time, either before or after the entry of an award, upon at least ten days' notice and opportunity to be heard, require the surety to pay the amount of the award, the same to be enforced in like manner as the award itself may be enforced. (Mar. 12, 1937, c. 64, §2.)

Under §288 a rider to a policy requiring employer to reimburse insurer in certain cases was valid. *Maryland Casualty Co. v. A.*, 204M43, 282NW806. See Dun. Dig. 10391.

Directors of county sanatorium having building constructed under contract are obliged to see that contractor has taken out insurance, and his contract should contain a provision to this effect. *Op. Atty. Gen.* (523c), Feb. 2, 1939.

A North Dakota employer executing a contract in this state does not comply with this act by taking insurance from the North Dakota Workmen's Compensation Fund. *Op. Atty. Gen.* (523a), June 21, 1939.

4272-3. Liability of employer exclusive.—The liability of an employer prescribed by the preceding sections shall be exclusive and in the place of any other liability whatsoever to such employe, his personal representative, surviving spouse, parents, child or children, dependents or next of kin, or any other person entitled to recover damages at common law or otherwise on account of such injury or death, except that if an employer other than state and the municipal subdivisions thereof, shall fail to insure or self-insure his liability for compensation, medical and other benefits, to his injured employe and their dependents, as provided in Section 2 of this Act, an injured employe, or his legal representatives or his dependents in case death results from the injury, may, at his or their option, elect to claim compensation under the Workmen's Compensation Law or to maintain an action in the courts for damages on account of such injury or death; and in such action it shall not be necessary to plead or prove freedom from contributory negligence, nor may the defendant plead as a defense that the injury was caused by the negligence of a fellow servant, nor that the employe assumed the risk of his employment, nor that the injury was due to contributory negligence of the employe, unless it shall appear also that such negligence was wilful on the part of the employe, but the burden of proof to establish such wilful negligence shall be upon the defendant.

The State of Minnesota and the several municipal subdivisions thereof, when not carrying insurance at the time of such injury or death shall be regarded and treated as self-insurers for the purposes of this Act. (Mar. 12, 1937, c. 64, §3.)

Violation of employer's orders does not defeat compensation unless it takes workman out of sphere or scope of his employment. *Prentice v. T.*, 202M455, 278NW895. See Dun. Dig. 10400.

City employe injured in course of his employment need not give a notice to city under §1831. *Op. Atty. Gen.* (523g-18), Aug. 25, 1938.

4272-4. Application of act.—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession, or occupation of his employer; provided, however, that an employer of farm laborers or domestics may assume the liability for compensation and benefits imposed by Sections 1 and 2 hereof

upon employers, and the purchase and acceptance by such employer of a valid compensation insurance policy, which shall include in its coverage a classification of farm laborers or domestics, shall constitute as to such employer an assumption by him of such liability without any further act on his part, and such assumption of liability shall take effect and continue from the effective date of such policy and as long only as such policy shall remain in force. If during the life of any such insurance policy, an employe, who is a farm laborer or domestic, shall suffer personal injury or death by an accident arising out of and in the course of his employment, the exclusive remedy of such employe or his dependents shall be to accept compensation and benefits according to the Workmen's Compensation Act. (Mar. 12, 1937, c. 64, §4.)

Act excludes from its operation only those employes whose employment is both casual and not in usual course of trade, business, profession, or occupation of employer. *Oberg v. D.*, 202M476, 279NV221. See Dun. Dig. 10394, 10404.

Caretaker of resort held not farm laborer because he was doing work on farm. *Id.* See Dun. Dig. 10394.

Employe of cow testing association is not a "farm laborer" and is protected by act. *Op. Atty. Gen.* (293b-6), Nov. 4, 1937.

4272-5. Liability of others than employer.—(1) Where an injury or death for which compensation is payable under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in accordance with Section 2 of this Act, the employe in case of injury, or his dependents in case of death, may, at his or their option, proceed either at law against such party to recover damages or against the employer for compensation, but not against both.

If the employe in case of injury, or his dependents in case of death, shall bring an action for the recovery of damages against such party other than the employer, the amount thereof, manner in which, and the persons to whom the same are payable, shall be as provided for by the Compensation Act, and not otherwise; provided, that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death.

If the employe or his dependents shall elect to receive compensation from the employer, then the latter shall be subrogated to the right of the employe or his dependents to recover against such other party, and may bring legal proceedings against such party and recover the aggregate amount of compensation and medical expense payable by him to such employe or his dependents hereunder, together with the costs and disbursements of such action and reasonable attorney's fees expended by him therein.

The provisions of subdivision 1 of this section shall apply only where the employer liable for compensation and the other party or parties legally liable for damages were both either insured or self-insured and were engaged in the due course of business, (a) in furtherance of a common enterprise, or (b) the accomplishment of the same or related purposes in operation on the premises where the injury was received at the time thereof, and not otherwise.

(2) Where an injury or death for which compensation is payable is caused under circumstances also creating a legal liability for damages on the part of any party other than the employer, such party being at the time of such injury or death insured or self-insured in accordance with Section 2 of this Act, but where the provisions of subdivision 1 of this section do not apply, or where said party or parties other than the employer are not insured or self-insured at time of such injury or death as provided by Section 2 of this Act, legal proceedings may be taken by the employe or dependents against such other party or parties to recover damages, notwithstanding the payment by the employer or his liability to pay compensation hereunder, but in such case, if the action

against such other party or parties is brought by the injured employe, or, in case of his death, by his dependents, and a judgment is obtained and paid or settlement is made with such other party, either with or without suit, the employer shall be entitled to deduct from the compensation payable by him the amount actually received by such employe or dependents after deducting costs, reasonable attorney's fees and reasonable expenses incurred by such employe or dependents in making such collections or enforcing such liability; provided that in such case if such action be not diligently prosecuted by the employe, or if, for any reason, the court deem it necessary or advisable in order to protect the interests of the employer, the court may, upon application, grant the right to the employer to intervene in any such action for the prosecution thereof, as now provided by law; provided that if the injured employe, or, in case of his death, his dependent, shall agree to receive compensation from the employer or shall institute proceedings to recover the same or accept from the employer any payment on account of such compensation, such employer shall be subrogated to all of the rights of such employe or dependents, and may maintain, or, in case an action has already been instituted, may continue the action, either in the name of the employe or dependents or in his own name, against such other party for the recovery of damages; provided that, in such case, if such action be not diligently prosecuted by the employer, or if, for any reason, the court deem it necessary or advisable in order to protect the interest of the employe, the court may, upon application, grant the right to the employe or his dependents, as the case may be, to intervene in any such action for the prosecution thereof, as now provided by law, but such employer shall, nevertheless, pay over to the injured employe or dependents all sums collected from such other party or parties, by judgment or otherwise, in excess of the amount of such compensation payable by the employer under the Workmen's Compensation Act, and costs, reasonable attorney's fees and reasonable expenses incurred by such employer in making such collection and enforcing such liability; provided that in no case shall such party be liable to any person other than the employe or his dependents for any damages growing out of or resulting from such injury or death. (Mar. 12, 1937, c. 64, §5.)

4272-6. Joint employers shall contribute.—In case any employe for whose injury or death compensation is payable under this Act shall, at the time of the injury or death, be employed and paid jointly by two or more employers liable for compensation under this Act, such employers shall contribute the payment of such compensation in the proportion of their several wage liabilities to such employe. If some of such employers shall be excluded from the Act and not liable for compensation, then the liability of such of them as are liable for compensation shall be to pay the proportion of the entire compensation which their proportionate wage liability bears to the entire wages of the employe; provided, however, that nothing in this Act shall prevent any arrangement between such employers for a different distribution as between themselves of the ultimate burden of such compensation. (Mar. 12, 1937, c. 64, §6.)

4272-7. Application of act.—All accidental injuries or deaths of employes arising out of and in the course of their employment which have and will occur under contracts of employment entered into prior to the effective date of this Act shall be governed by the Workmen's Compensation Law in force at the time of such injury or death notwithstanding any provision in this Act to the contrary. (Mar. 12, 1937, c. 64, §7.)

4272-8. Legal services an enforceable lien.—No claim for legal services or disbursements pertaining to any demand made or suit or proceeding brought

under the provisions of this Act shall be an enforceable lien against the amount paid or payable as compensation or damages, or be valid or binding in any other respect, unless the same be approved in writing by the Industrial Commission if such claim arises out of a proceeding for compensation under this Act, or by the judge presiding at the trial in an action for damages, or by a judge of the district court in settlement of a claim for damages without trial. Provided that if notice in writing be given to the employer or his insurer or the defendant, as the case may be, of such claims for legal services or disbursements, the same shall be a lien against the amount paid or payable as compensation, subject to determination of the amount and approval hereinbefore provided. (Mar. 12, 1937, c. 64, §8.)

4272-9. Act not severable.—This Act as a whole being incompatible with the Workmen's Compensation Act as it now exists, the provisions hereof are hereby declared to be inseparable and if any section, clause or part thereof shall be found invalid, then the whole Act shall be invalid. (Mar. 12, 1937, c. 64, §9.)

4272-10. Acts repealed.—Sections 4261, 4262, 4263, 4264, 4265, 4266, 4267, 4268, 4269, 4270, 4271, 4272, 4277 and 4291, Mason's Minnesota Statutes, 1927, all relating to compensation, and all acts or parts of acts inconsistent herewith are hereby repealed. (Mar. 12, 1937, c. 64, §10.)

Section 11 of Act Mar. 2, 1937, cited, provides that the act shall take effect on and after July 1, 1937.

4273. Minors have power to contract, etc.

Decedent having met death in an occupation prohibited by law at his age, the case is not within the jurisdiction of the Industrial Commission. *Weber v. B.*, 182M486, 234NW682. See Dun. Dig. 10394(47).

4274. Schedule of compensation. * * * *

(g) If any employe entitled to the benefits of the Workmen's Compensation Law is a minor and sustains injuries resulting in permanent total or permanent partial disability, the weekly earnings for the purpose of computing the compensation to which he is entitled shall be the weekly earnings which such minor would probably earn after arriving at legal age if uninjured, which probable earnings shall be approximately the average earnings of adult workmen below the rank of superintendent or general foreman in the plant or industry in which such minor was employed at the time of his injury. (G. S., §4274, subd. g, added Apr. 19, 1929, c. 250.)

1. In general.

Where there is a specific schedule for the compensation of the loss of a member and parts of a member, no additional payment may be exacted for disfigurement or disability therefrom, except for medical services to remove or cure some defect resulting from the amputation. 174M551, 219NW867.

Death of workman from cause other than the accident while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. 176M464, 223NW773.

Where office assistant of attorney accidentally sprained wrist in operating typewriter and could not operate typewriter for three weeks, she was entitled to recover compensation and medical fees, notwithstanding that the employer paid her full salary during the period of disability and retained her in the office for such work as she could do, such payments being, in part, a gratuity. *Koppe v. H. & T.*, 176M508, 223NW787.

Evidence held to sustain finding of commission as to duration of disability. *Metcalfe v. F.*, 187M485, 246NW28. See Dun. Dig. 10410.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. *Rosenfeld v. M.*, 201M113, 275NW698. See Dun. Dig. 10389.

Employee is entitled to recover compensation only from his employer, and not from prior employers. *Yoselowitz v. P.*, 201M600, 277NW221. See Dun. Dig. 10395.

2. Temporary total and permanent partial disability.

Findings of permanent partial disability of 50 per cent. held sustained by evidence, the Commission not being bound by undisputed expert testimony. 179M338, 228NW169.

Finding that total temporary disability from neurosis had ceased, held not sustained by evidence. 180M411, 230NW897.

Evidence held to sustain finding that when employers discontinued paying compensation to employe for a fractured leg, the employe was totally disabled and might be permanently partially disabled. *Lund v. B.*, 183M247, 236NW215. See Dun. Dig. 10410.

Discontinuance of compensation to one with a fractured leg was unwarranted where he was totally disabled at the time, and it could not be determined what his permanent disability might be, and such employe was entitled to further medical aid. *Lund v. B.*, 183M247, 236NW215. See Dun. Dig. 10410.

Finding that one suffering hysterical paralysis rendering his right arm useless was totally disabled held supported by evidence. *Rystedt v. M.*, 186M185, 242NW623. See Dun. Dig. 10410.

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. *Modin v. C.*, 189M517, 250NW73. See Dun. Dig. 10410.

Degree of physical disability is not measure by which to determine amount of an award of compensation for permanent partial disability. *Enrico v. O.*, 199M190, 271NW456. See Dun. Dig. 10410.

Pain caused by neuroma near knee cap, which would prevent employe from working, might in itself constitute temporary total disability, without regard to loss of flexion of knee. *Kruchowski v. S.*, 201M557, 277NW15. See Dun. Dig. 10410.

4. Injury to thumb or finger.

Loss of distal or first phalange of thumb and one-half lacking one-eighth of an inch of the second or proximal phalange thereof, was compensable as loss of half the thumb. 174M551, 219NW867.

4½. Injury to legs.

Where there was permanent partial disability of two legs, it was error to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 41 and 19, but compensation should be governed by paragraph 44. *Smith v. K.*, 197M558, 267NW478. See Dun. Dig. 10410.

Where there was permanent partial disability of two legs, it was proper to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 19 and 41. *Smith v. K.*, 197M558, 269NW633, amending opinion in 267NW478. See Dun. Dig. 10410.

4¾. Injury to eyes.

In determining extent of injuries occasioned to vision, "correction by glasses" may be taken into consideration. *Foster v. S.*, 197M602, 268NW631. See Dun. Dig. 10410.

There was no total permanent disability arising from injuries to both eyes, where all witnesses testified that employe had enough vision to at least distinguish objects. *Id.*

Extent of permanent partial loss of vision should be determined without regard to possible correction by use of glasses or lens. *Livingston v. S.*, 203M62, 279NW829. See Dun. Dig. 10410.

5. Hernia and recurring disability.

Determination of Industrial Commission against positive and unimpeached testimony of the existence of hernia reversed. 179M177, 228NW607.

6. "Necessity" for retraining.

Retraining for a new occupation is necessary when it will materially assist employe in restoring his impaired capacity to earn a livelihood. *Vierling v. S.*, 187M252, 245NW151. See Dun. Dig. 10410.

Evidence held sufficient to sustain a finding of referee, that retraining in poultry business will materially assist in restoring employe's impaired capacity to earn a livelihood. *Vierling v. S.*, 187M252, 245NW151. See Dun. Dig. 10410.

Upon record, industrial commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employe for permission to submit further evidence. *Vierling v. S.*, 187M252, 245NW151. See Dun. Dig. 10421.

7. Permanent total disability.

The provision as to payment of compensation during period of confinement in public institution is applicable to the case of partial disability where total disability subsequently arises from non-compensable causes. *Naslund v. F.*, 181M301, 232NW342. See Dun. Dig. 10410.

Whether laborer suffering fracture of vertebra and inner condyle of ankle was permanently and totally disabled, held issue of fact for industrial commission. *Benson v. W.*, 189M622, 250NW673. See Dun. Dig. 10421.

Evidence held to sustain finding that respondent was permanently and totally disabled by an injury sustained while in course of his employment. *Furlong v. N.*, 190M552, 252NW656. See Dun. Dig. 10404, 10410(15).

Evidence held to sustain finding that man 71 years of age was totally disabled by reason of accident. *Id.* See Dun. Dig. 10406.

Permanent total disability is largely a question of fact. *Krnetich v. O.*, 202M158, 277NW525. See Dun. Dig. 10410.

In determining whether accidental injury has caused a total or a partial permanent disability, commission properly refused to adopt as a determining factor that injured employe had diligently sought such work as he was capable of performing without obtaining any. *Id.*

A previous disability resulting in amputation of all but upper three or four inches of left forearm, combined with subsequent injury causing a 75% limitation of motion of right arm and hand, amounts to total disability.

as matter of law, entitling unskilled laborer to compensation from special compensation fund. *Green v. S.*, 202 M254, 278NW157. See Dun. Dig. 10410.

8. Double disabilities.

Double disabilities coming within the 400 weeks' provisions under subdivisions 28 to 37 of §4274 relate only to total disability of at least two members. 177M539, 225NW895.

9. Death resulting from injury.

Where one engaged in hauling bottled goods in his own truck at \$1.25 per hour worked at irregular hours from June 29 to July 3 and received checks amounting to \$54.81, award of \$18 per week during dependency, not to exceed \$7,500 and funeral expenses paid, held proper for his death. *Anderson v. C.*, 190M125, 251NW3. See Dun. Dig. 10412.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. *Lewis v. C.*, 196 M108, 264NW581. See Dun. Dig. 10418.

10. Disfigurement.

Scar on face of salesman as affecting necessity of permitting examination by employer's physician. *Nelson v. K.*, 201M123, 275NW624. See Dun. Dig. 10415.

4275. Dependents and allowances. * * * * *

(11) Compensation on remarriage of widow.—

In the case of remarriage of a widow without dependent children she shall receive a lump sum settlement equal to one-half of the amount of the compensation remaining unpaid, without deduction for interest, but not to exceed two full years' compensation. In case of remarriage of a widow who has dependent children the unpaid balance of compensation which would otherwise become her due shall be payable to the mother, guardian, or such other person as the Industrial Commission may order for the use and benefit of such children during dependency; provided that if the dependency of the children ceases before the equivalent of two years of the mother's compensation has been paid to the children, the remainder of the two years' compensation shall be payable in a lump sum to the mother without deduction for interest. The payments as provided herein shall be paid within sixty (60) days after written notice to the employer of such remarriage or that the dependency of children has ceased; provided, however, that no widow who remarries shall be held to be a widow without dependent children when the deceased employe leaves a dependent child or children as defined by paragraph (b) Section 4326, General Statutes 1923. (As amended Mar. 7, 1933, c. 61, §1.)

* * * * *

Sec. 2 of Act Mar. 7, 1933, cited, provides that the act shall take effect from its passage.

Father of young man killed held not a partial dependent. 173M498, 217NW679.

Subdivision 19 is operative only when there is a partial dependent. 173M498, 217NW679.

Contributions to defendants need not be literally from money earned as wages but may consist of labor. 174 M227, 218NW882.

Common-law marriage and proof thereof. 175M51, 220 NW401.

Brother held not dependent. 177M332, 225NW117.

Evidence held to show that parents were dependents. 180M289, 230NW652.

Evidence held to sustain finding that relator was not dependent of her brother. *Hallstrom v. H.*, 183M334, 236NW482. See Dun. Dig. 10411.

The evidence sufficiently supports the finding that father of a 24 year old son accidentally killed in the course of his employment, was not a partial dependent of the son. *Larson v. A.*, 184M33, 237NW606. See Dun. Dig. 10411.

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. *Lunceford v. F.*, 183M610, 239NW673. See Dun. Dig. 10411.

Compensation to be paid a dependent widow without children is governed by law in force at time of husband's death, including amount to be paid as a lump sum in case of remarriage. *Warner v. Z.*, 184M598, 239NW761. See Dun. Dig. 10388(24), 10412.

Conclusive presumption obtains that widow of a workman is wholly dependent and entitled to compensation, even though living apart from him, unless it be shown that she voluntarily so lived. *Conway v. T.*, 187M223, 244NW807. See Dun. Dig. 10411.

The \$7,500 limitation on compensation for death is total to be allowed in such cases, and, where widow without children is entitled to compensation up to that amount, nothing remains for any other dependents, and

they cannot come in and share in the \$7,500 coming to the widow, or receive compensation in addition to \$7,500 to which widow is entitled. *Miller v. B.*, 192M242, 255 NW335. See Dun. Dig. 10412.

Circumstance that decedent's dependent widow was a member of employer-partnership did not relieve it or its insurer from liability. *Keegan v. K.*, 194M261, 260NW 318. See Dun. Dig. 10411.

Evidence held sufficient to support finding that at time of death employee was earning and contributing to his mother's support more than \$8.00 per week. *Olson v. E.*, 194M458, 261NW3. See Dun. Dig. 10412.

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8½ months after death girl bore a child of the employee, there was no marriage and child was not entitled to compensation. *Guptil v. E.*, 197M211, 266NW748. See Dun. Dig. 10411.

Evidence held to sustain finding that sister and half-sister were not dependents, though deceased made many contributions by way of gifts to them. *Segerstrom v. N.*, 198M298, 269NW641. See Dun. Dig. 10411.

Respective rights and obligations as to compensation and other benefits under workmen's compensation law become fixed as of date of compensable accident. If accident causes death, such rights become fixed at time of death. *Roos v. C.*, 199M284, 271NW582. See Dun. Dig. 10410.

A child ceases to be a dependent when he arrives at age of eighteen if he is not "physically or mentally incapacitated from earning." *Merchants Trust Co. v. G.*, 200M281, 274NW175. See Dun. Dig. 10411.

Minor children under age of 16 years are conclusively presumed to be dependents. Id.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. *Rosenfeld v. M.*, 201M113, 275NW698. See Dun. Dig. 10385.

Proceeding by dependent of deceased employee, who had begun proceedings and received compensation, for purpose of securing benefits, is merely a reopening or continuation of proceedings commenced by employee and is not barred by statute of limitations, though right asserted by dependent is distinct from that asserted by employee and a full adjudication of latter's rights is no bar to assertion of dependent's right after employee's death. *Johnson v. P.*, 203M347, 281NW290. See Dun. Dig. 10411.

(1). Finding that wife had voluntarily been living apart from employee for three years at time of his death, held supported by evidence. *Olson v. D.*, 190M426, 252NW 78. See Dun. Dig. 10411(33).

(11). Amended. Laws 1933, c. 61.

Where upon remarriage of widow employer made final lump sum settlement by paying half of amount of compensation, other half became payable to a minor child. *Stegner v. C.*, 189M290, 249NW189. See Dun. Dig. 10388.

(17). Subdivision 14 should be construed with subdivision 17, and surviving partially dependent parent is entitled to thirty-five forty-fifths of original award. *Peterson v. M.*, 195M359, 263NW117. See Dun. Dig. 10412.

4276. Disability or death resulting from injury—Increase of previous disability—Special compensation fund.—If an employe receives an injury which of itself would cause only permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Provided, however, that in addition to compensation of such permanent partial disability and after the cessation of the payments for the prescribed period of weeks, the employee shall be paid by the state the remainder of the compensation that would be due for permanent total disability, out of a special fund known as the special compensation fund, and created for such purpose in the following manner:

A. In every case of the death of an employee resulting from an accident arising out of and in the course of his employment where there are no persons entitled to compensation, the employer shall pay to the industrial commission the sum of \$300.

B. Whenever an employee shall suffer a compensable injury, which results in permanent partial disability by reason of the total loss of a member or members, or injury to a member or members resulting in less than a total loss of such member, and which injury entitles him to compensation pursuant to Mason's Minnesota Statutes of 1927, Section 4274, paragraph (c), the employer or his insurer shall, in addi-

tion to the compensation provided for in said paragraph (c), pay to the industrial commission for the benefit of the special compensation fund a lump sum, without interest deductions, equal to two per cent of the total compensation to which the employee is entitled to under said paragraph (c) for said permanent partial disability, said sum to be paid to the industrial commission as soon as the total amount of the permanent partial disability payable for the particular injury is determined by the industrial commission, or arrived at by the agreement of the parties and such amount is approved by the industrial commission.

Such sums as are paid to the industrial commission pursuant to the provisions hereof shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits provided by this act. All moneys heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund.

The state treasurer shall be the custodian of this special fund and the industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of paragraph A of this section, and dependency later is shown, or if deposit is or has been made pursuant to either paragraphs A or B hereof by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission. ('21, c. 82, §16; '23, c. 300, §5; Mar. 9, 1933, c. 75; Dec. 27, 1933, Ex. Ses., c. 21, §1; Apr. 29, 1935, c. 311, §1; Jan. 18, 1936, Ex. Ses., c. 43, §1.)

Sec. 2 of Act Dec. 27, 1933, cited, provides that the act shall take effect from its passage.

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

Where partial disability from an injury is combined with a previous disability causing total disability the injured person is entitled to the additional compensation provided by this section. 179M388, 229NW553.

That employee's physical condition was predisposing of contributing cause did not prevent compensation for heat stroke which was immediate producing cause of death. Pearson v. F., 186M155, 242NW721. See Dun. Dig. 10397.

Evidence held to show that disability, apart from permanent partial disability due to accidental injury, resulted from disease and old age subsequent to accident for which compensation was received. Skoog v. S., 198 M504, 270NW129. See Dun. Dig. 10403.

Section applies though previous disability and subsequent partial disability are due to accident by employee in course of continuous employment with same employer. Peterson v. H., 200M253, 273NW812. See Dun. Dig. 10410.

Where, in case of death of employee in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. Schmahl v. S., 200M294, 274 NW168. See Dun. Dig. 10419.

Act does not take away common law right of action of employer to recover from employee for injuries received by employer as a result of negligence of employee in driving automobile in course of his employment. Rosenfield v. M., 201M113, 275NW698. See Dun. Dig. 10385.

A previous disability resulting in amputation of all but upper three or four inches of left forearm, combined with subsequent injury causing a 75% limitation of motion of right arm and hand, amounts to total disability, as matter of law, entitling unskilled laborer to compensation from special compensation fund. Green v. S., 202M254, 278NW157. See Dun. Dig. 10410.

Constitutionality of requirement that employer pay money into state treasury where deceased employee leaves no dependents. 23MinnLawRev555.

4277. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, ante, §4272-10.

Where janitor performs services for several, and is injured in the service of one employer, he is entitled to compensation from such employer, based on his total regular earnings as a janitor. 171M402, 214NW265.

The term "employment," as used in section 4325, means the particular kind of employment in which the employee was engaged at the time of the accident. 171M402, 214 NW265.

4279. Medical and surgical treatment.—The employer shall furnish such medical, surgical and hospital treatment, including nursing, medicines, medical and surgical supplies, crutches and apparatus, including artificial members, as may reasonably be required at the time of the injury, and during the disability to cure and relieve from the effects of the injury, provided that in case of his inability or refusal seasonably to do so the employer shall be liable for the reasonable expense incurred by or on behalf of the employee in providing the same; provided further, that upon request by the employee, the industrial commission may require the above treatment, articles and supplies for such further time as the industrial commission may determine, and a copy of such order shall be forthwith mailed to the parties in interest. Any party in interest, within ten days from the date of mailing, may demand a hearing and review of such order.

The commission may at any time upon the request of an employe or employer order a change of physician and designate a physician suggested by the injured employe or by the commission itself, and in such case the expense thereof shall be borne by the employer upon the same terms and conditions as hereinbefore provided in this section for medical and surgical treatment and attendance.

The pecuniary liability of the employer for the treatment, articles and supplies herein required shall be limited to such charges therefor as prevail in the same community for similar treatment, articles and supplies furnished to injured persons of a like standard of living, when the same are paid for by the injured persons. The industrial commission may on the basis above stated determine the reasonable value of all such service and supplies, and the liability of the employer shall be limited to the amount so determined. ('21, c. 82, §19; '23, c. 300, §6; Apr. 19, 1929, c. 248, §1.)

Kummer v. M., 185M501, 241NW681; note under §4319.

Where stump of thumb has a tender spot which interferes with its use due to end of nerve becoming imbedded in scar tissue, which may be cured by simple operation, employer must furnish the cure. 174M551, 219NW551.

Laws 1919, c. 354, does not limit the amount which district court may allow to injured employe for medical, surgical, and hospital treatment to \$100 for each 90-day period, in view of the history of legislation relating thereto, as shown by Laws 1913, c. 467, §18 [§4330], and Laws 1915, c. 209, §7 [repealed]. 175M319, 222NW508.

Where office assistant of attorney accidentally sprained wrist in operating typewriter and could not operate typewriter for three weeks, she was entitled to recover compensation and medical fees, notwithstanding that the employer paid her her full salary during the period of disability and retained her in the office for such work as she could do, such payments being, in part, a gratuity. Koppe v. H. & T., 176M508, 223NW787.

Where a married woman is accidentally injured in the course and within the scope of her employment, and the employer and his insurer under the law have assumed liability for and have paid the medical and hospital expenses of the injured employe, no liability or cause of action for recovery of such expenses vests or remains in the husband of the injured employe. Arvidson v. S., 183M446, 237NW12. See Dun. Dig. 10415.

Where employer after notice of disability denied employe compensation, and, by its own doctor, advised employe to return to doctor, he first consulted for treatment, commission was justified in awarding employe reasonable expenses incurred for medical and surgical treatment. Clausen v. M., 186M30, 242NW397. See Dun. Dig. 10415.

An employe will not be deprived of compensation by reason of his failure to discover and treat injuries to himself where he does not know their nature or character. Kruchowski v. S., 201M557, 277NW15. See Dun. Dig. 10415.

Industrial commission cannot enter upon land owned by federal government where post office is being constructed and enforce safety measures provided by §4141 to 4187, 4279. Op. Atty. Gen., July 28, 1933.

4280. Notice of injury, etc.

Notice provided in section 1, c. 363, Laws 1919, must be given by employer in order to start running of statute of limitations therein provided for. 173M414, 217NW 491.

Evidence, held to show that sarcoma resulted from injury to leg from fall of box which employe was carrying. 180M477, 231NW195.

Where employe is hurt in accident producing injury to physical structure which does not result in disability for some time, time for employe to comply with conditions in this section begins to run from occurrence of disability or time injury manifests itself as likely to cause disability. *Clausen v. M.*, 186M80, 242NW397. See Dun. Dig. 10419.

Actual knowledge of occurrence of injury by employer's superintendent and foreman was knowledge of employer and dispensed with necessity of written notice. *Markoff v. E.*, 190M555, 252NW439. See Dun. Dig. 10420.

Evidence held to sustain finding that employer did not obtain knowledge or notice of injury complained of within time specified by law. *Utgard v. H.*, 202M637, 279NW 748. See Dun. Dig. 10420.

4281. Service and form of notice.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. *Kling v. P.*, 194M179, 259NW809. See Dun. Dig. 10420.

4282. Limit of actions.

Proceeding held the reopening of a proceeding and not a new proceeding and not barred by this section. 177M555, 225NW889.

Defense that compensation was barred by this section, not presented to Industrial Commission, cannot be raised on appeal. *Krenz v. K.*, 186M312, 243NW108. See Dun. Dig. 10426.

Application for workmen's compensation for retraining rests in original proceeding, and is not an independent proceeding that will be barred by statute of limitations, ignoring original proceeding of which it is a part. *Vierling v. S.*, 187M252, 246NW150. See Dun. Dig. 10419.

By settlement agreement and submission of same to commission for action any claim that proceeding was barred by limitations was waived. *Worwa v. M.*, 192M77, 255NW250. See Dun. Dig. 10419.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employee his full wage for some time after accident while disabled, the arrangement between the employer and the employee not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. *Lunzer v. W.*, 195M29, 261NW477. See Dun. Dig. 10419.

Where employer has made no written report of accident, there can yet be no recovery of compensation unless proceeding before commission be commenced within six years from date of accident. *Id.*

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for the death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. *Lewis v. C.*, 196 M108, 264NW581. See Dun. Dig. 10418.

A "nondisabling accident report" does not start running two-year period of limitations where employee went immediately back to work and actual partial disability did not appear until later. *Pease v. M.*, 196M552, 265NW 427. See Dun. Dig. 10419.

"Written report of the injury" is that prescribed by §4293, and main purpose of notice is doubtless to enable commission to advise employee of his rights as required by §4294. *Id.* See Dun. Dig. 10420.

Two-year limitations did not apply to a seemingly trivial "non-disabling accident." *Pechavar v. O.*, 196M553, 265NW429. See Dun. Dig. 10419.

Where, in case of death of employee in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. *Schmahl v. S.*, 200M294, 274NW168. See Dun. Dig. 10419.

Neither filing of a written report of accident by employer with industrial commission, nor its furnishing medical care to relator, constituted a proceeding within meaning of statute. *Mattson v. O.*, 201M35, 275NW403. See Dun. Dig. 10419.

Six-year limitation on proceedings by dependents commences to run from time of accident and not from time of death. *Nyberg v. L.*, 202M86, 277NW536. See Dun. Dig. 10419.

Act contemplates only one proceeding to enforce compensation rights of both employee and his dependents arising from one casualty, and commencement of proceeding by employee during his lifetime, tolls limitation provisions relating to proceedings by dependents, proceedings by latter after death of employee being a reopening or continuance of proceeding commenced by employee. *Id.*

Proceeding by dependent of deceased employee, who had begun proceedings and received compensation, for purpose of securing benefits, is merely a reopening or continuation of proceedings commenced by employee and is not barred by statute of limitations, though right asserted by dependent is distinct from that asserted by employee and a full adjudication of latter's rights is no bar to assertion of dependent's right after employee's death. *Johnson v. P.*, 203M347, 281NW290. See Dun. Dig. 10419.

4283. Examination and verification of injury.

177M555, 225NW889.

An employee will not be deprived of compensation by reason of his failure to discover and treat injuries to himself where he does not know their nature or character. *Kruchowski v. S.*, 201M557, 277NW15. See Dun. Dig. 10415.

(1).

After an award has been made, employer's right to compel employee to submit to a physical examination by a physician selected by employer is within sound judgment and discretion of commission. *Nelson v. K.*, 201M123, 275NW624. See Dun. Dig. 10415.

(2).

Refusal to order examination of an injured employee by a neutral physician is an administrative matter within discretion of industrial commission. *Astell v. C.*, 201 M108, 275NW420. See Dun. Dig. 10421.

(4).

Employer which did not apply to commission cannot complain that it was refused autopsy. *Brameld v. A.*, 186M89, 242NW465. See Dun. Dig. 10421.

4284. Compensation to alien dependents.—In case a deceased employe, for whose injury or death compensation is payable, leaves surviving him an alien dependent or dependents residing outside of the United States, the industrial commission shall direct the payment of all compensation due to such dependent or dependents, to be made to the duly accredited consular office of the country of which the beneficiaries are citizens, if such consular officer resides within the state of Minnesota, or to his designated representative residing within the state, or if the industrial commission believes that the interests of such alien dependent will be better served, and such alien dependent shall at any time prior to final settlement file with the commission a power of attorney designating any other suitable person residing in this state to act as attorney in fact in such proceedings, then the said Industrial Commission may in its discretion appoint such person. Provided that, if it appears necessary to institute or carry on any proceedings to enforce payment of compensation due to such dependent or dependents, the Industrial Commission may permit the said consular officer to commence and institute said proceedings, and if during the pendency of the same, following the death of the alien employe, such power of attorney is filed by said alien dependent, the Industrial Commission shall then summarily exercise its discretion and determine whether such attorney in fact shall be substituted to represent said alien dependent or if the said consular officer or his representative shall continue therein. Such person so appointed may institute and carry on proceedings to settle all claims for compensation and to receive for distribution to such alien dependent or dependents all compensation arising hereunder. The settlement and distribution of said funds shall be made only on order of the commission. Such person so appointed shall furnish a good and sufficient bond, satisfactory to the commission, conditioned upon the proper application of the moneys received by him. Before such bond is discharged, such person so appointed shall file with the commission a verified account of the items of his receipts and disbursements of such compensation.

Such person so appointed shall, before receiving the first payment of such compensation and thereafter when so ordered so to do by the commission, furnish to the commission a sworn statement containing a list of the dependents, with the name, age, residence, extent of dependency, and relationship to the deceased of each dependent. In any proceedings heretofore taken to recover compensation for any alien dependent where the same have been instituted and carried on for a period of at least five years in the name of a person as petitioner, designated by power of attorney from the alien dependent, the right of such designated petitioner to conclude said proceedings or final settlement and to fully bind all parties thereby, is hereby legalized in all respects. ('21, c. 32, §24; Apr. 19, 1929, c. 251; Apr. 22, 1939, c. 416.)

4285. Payment in lump sum.—The amounts of compensation payable periodically hereunder may be commuted to one or more lump sum payments only by order of the commission and on such terms and conditions as the Commission may prescribe.

In making such commutations the lump sum payments shall, in the aggregate, amount to a sum equal to the present value of all future installments of compensation calculated on a five per cent basis. ('21, c. 82, §25; Apr. 26, 1929, c. 400.)

Stitz v. R., 192M297, 256NW173; note under §8812.

Worwa v. M., 192M77, 256NW250; note under §4269, note 1.

Employers' Mut. L. Ins. Co. v. E., 192M398, 256NW663; note under §4286.

When lump settlement is made in absence of a periodic award, commission has jurisdiction to entertain a petition to set aside settlement for purpose of determining whether or not compensation should be paid for subsequently appearing disability. *Johnson v. P.*, 187M362, 245NW619. See Dun. Dig. 10418.

Dependents of a workman have a separate and independent right in event of his death, and where death occurs within six years of accident, dependents are entitled to compensation for the death, notwithstanding that employer and insurer made settlement with injured employee on basis of total disability, and such settlement was approved by industrial commission. *Lewis v. C.*, 196M108, 264NW581. See Dun. Dig. 10412.

Lump sum settlement can be obtained only by order of industrial commission, and is solely within discretion of commission. Op. Atty. Gen. (523a-18), Aug. 4, 1938.

4286. Payment to trustee.

Where compensation is commuted under §4285, and dependent beneficiary dies before receiving whole sum placed in trust for his benefit under §4286, depositing insurer may not recover balance unexpended at time of beneficiary's death. *Employers' Mut. L. Ins. Co. v. E.*, 192M398, 256NW663. See Dun. Dig. 10414.

4287. Compensation preferred claim.

An award under the Workmen's Compensation Act is not a "debt incurred to any laborer or servant for labor or service performed," within the meaning of Const. art. 1, §12, and is not a lien upon the employer's homestead. 175M161, 220NW421.

Death of workman from other causes while receiving compensation for injury terminates all rights to compensation to accrue to him thereafter. 176M464, 223NW773.

Award is not assignable, and attorney fees cannot be collected out of award unless approved by commission. 180M388, 231NW193.

An agreement between an injured employee and his employer, to pay employee same wage weekly he was earning before injury, regardless of his ability to work, and employee to pay over to employer weekly compensation paid by latter's insurer, is not prohibited by statute nor against public policy; but it is invalid where its effect is to lessen employee's compensation prescribed by Workmen's Compensation Act. *Ruehmann v. C.*, 192M596, 257NW501. See Dun. Dig. 10413.

In action by employee to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. Id.

An appropriation to industrial commission for compensation to certain person may not be assigned. Op. Atty. Gen., May 4, 1933.

4288. Employer to insure employees—Exceptions.

Stitz v. R., 192M297, 256NW173; note under §8812, note 1.

This section provides the exclusive method for a separation of the risks assumed by an insurer for an employer's obligation under the compensation act. 173M354, 217NW358.

There is but one risk for the purpose of compensation insurance and the parties thereto cannot without the approval of the Commission, limit the coverage to certain occupations. 173M354, 217NW358.

An insurer of an employer may question cancellation of alleged coinsurer's contract for purpose of showing that coinsurance was in effect at time of loss. *Byers v. E.*, 190M253, 251NW267. See Dun. Dig. 4805.

Industrial commission may bring in alleged coinsurer as additional party for purpose of determining if coinsurance exists. Id. See Dun. Dig. 4805.

Proceedings by an injured employee or his dependent may be brought directly against employer and insurer at the same time. *Keegan v. K.*, 194M261, 260NW318. See Dun. Dig. 10424.

Where new corporation was formed taking over business of several old corporations and employee of old corporation worked for new corporation with knowledge of the fact, he must recover his compensation for injuries from new corporation and not old corporation, and insurance carrier of old corporation would not be liable. *Yoselowitz v. P.*, 201M600, 277NW221. See Dun. Dig. 10391.

Statute does not prevent employer and insurer from governing their respective rights and duties by agreement so long as stipulation does not abridge or impair protection thrown around employees by statute. *Maryland Casualty Co. v. A.*, 204M43, 282NW806. See Dun. Dig. 10391.

Ordinarily persons employed on relief projects are not employees of county within meaning of compensation law or workmen's compensation insurance policy. Op. Atty. Gen. (523g-18), Mar. 15, 1935.

A city may carry workmens compensation insurance in a mutual company under a policy limiting liability within maximum indebtedness of such municipality as prescribed by law. Op. Atty. Gen. (489c-5), May 23, 1935.

It is optional with a municipality whether or not it shall carry insurance. Op. Atty. Gen. (523a-5), July 19, 1935.

Whether persons working on relief are employees is question of fact, but where county binds itself in contract with state in connection with obtaining funds to carry insurance on relief workers, there is an agreement which is not ultra vires of which such employees may take advantage. Op. Atty. Gen. (523g-18), Mar. 21, 1936.

Carrying of workmen's compensation insurance is optional with board of town. Op. Atty. Gen. (523e-2), Feb. 8, 1937.

County sanatoriums and joint county sanatoriums may make provisions for compensation insurance. Op. Atty. Gen. (556a), Feb. 14, 1939.

Towns may carry workmen's compensation insurance in their discretion. Op. Atty. Gen. (523e-2), April 10, 1939.

Neither a township nor an association of townships are required to carry workmen's compensation insurance. Op. Atty. Gen. (523e-2), June 28, 1939.

4289. Who may insure—policies.—Any employer

who is responsible for compensation as provided under part 2 of this act may insure the risk in any manner then authorized by law. But those writing such insurance shall in every case, be subject to the conditions of this section hereinafter named.

If the risk of the employer is carried by any insurer doing business for profit, or by an insurance association or corporation formed of employers, or of employers and workmen, to insure the risks under part 2 of this act, operating by the mutual assessment or other plan or otherwise, then insofar as policies are issued on such risks they shall provide for compensation for injuries or death, according to the full benefits of part 2 of this act.

Such policies shall contain a clause to the effect that as between the workman and the insurer, that notice to and knowledge by the employer of the occurrence of the injury shall be deemed notice and knowledge on the part of the insurer; that jurisdiction of the employer for any purpose shall be jurisdiction of the insurer, and that the insurer will, in all things, be bound by and subject to the awards rendered against such employer upon the risks so insured.

Such policies must provide that the workman shall have an equitable lien upon any amount which shall become owing on account of such policy to the employer from the insurer, and in case of the legal incapacity or inability of the employer to receive the said amount and pay it over to the workman or dependents, the said insurer will pay the same direct to said workman or dependents, thereby discharging all obligations under the policy to the employer, and all of the obligations of the employer and insurer to the workman; but such policies shall contain no provision relieving the insurance company from payment when the employer becomes insolvent or discharged in bankruptcy or otherwise, during the period the policy is in force, if the compensation remains owing.

The insurer must be one authorized by law to conduct such business in the state of Minnesota and authority is hereby granted to all insurance companies writing such insurance to include in their policies in addition to the requirements now provided by law, the additional requirements, terms and conditions in this section provided. No agreement by an employee to pay to an employer any portion of the cost of insuring his risk under this act shall be valid. But it shall be lawful for the employer and the workman to agree to carry the risk covered by part 2 of this act in conjunction with other and greater risks and providing other and greater benefits such as addi-

tional compensation, accident, sickness or old age insurance or benefits, and the fact that such plan involves a contribution by the workman shall not prevent its validity if such plan has been approved in writing by the Industrial Commission. Any employer who shall make any charge or deduction prohibited by this section shall be guilty of a misdemeanor.

If the employer shall insure to his employees the payment of the compensation provided by part 2 of this act in a corporation or association authorized to do business in the state of Minnesota, and approved by the insurance commissioner of the state of Minnesota, and if the employer shall post a notice or notices in a conspicuous place or in conspicuous places about his place of employment, stating that he is so insured and stating by whom insured, and if the employer shall further file copy of such notice with the Industrial Commission, then, and in such case, any proceedings brought by an injured employe or his dependents shall be brought directly against the insurer, and the employer or insured shall be released from any further liability.

Provided that in case of insolvency or bankruptcy of such insurance company the employer shall not be released from liability under the provisions of this act.

The return of any execution upon any judgment of an employe against any such insurance company unsatisfied in whole or in part, shall be conclusive evidence of the insolvency of such insurance company, and in case of the adjudication of bankruptcy or insolvency of any such insurance company by any court of competent jurisdiction proceedings may be brought by the employe against the employer in the first instance, or against such employer and insurance company jointly or severally or in any pending proceedings against any insurance company, the employer may be joined at any time after such adjudication.

That the provisions of this section to the extent that the same are applicable shall apply also when an employer exempted from insuring his liability for compensation as provided in section 4288 shall insure any part of his liability for said compensation. ('21, c. 82, §29; '23, c. 282, §2; Apr. 25, 1931, c. 352, §1.)

Sec. 2 of Laws 1931, c. 352, provides that the act shall take effect from and after July 1, 1931.

Stitz v. R. 192M297, 256NW153; note under §8812. Standard policy of insurance held to protect employer under an accident not covered by workmen's compensation act and from judgment obtained in an action at law in state court. *Globe Indemnity Co. v. B.*, (USCCA8), 90F(2d)774.

Temporary coverage given to enable plaintiff to determine whether it would renew indemnity held to have expired at time of injury to certain plaintiff's employes. 175M577, 222NW72.

A binder and policy of insurance held not to have imposed upon the insurer liability for a premium deposit paid to former insolvent insurer. 177M36, 224NW 253.

First day was excluded and last day included in determining time of cancellation of workman's compensation insurance policy. *Olson v. M.*, 188M307, 247NW8. See Dun. Dig. 9625.

Where police officer injured foot resulting in osteomyelitis during period covered by one insurance carrier, and suffered another injury making a latent condition become acute during the existence of policy of another insurance carrier, evidence held to support decision requiring each insurance carrier to pay half of compensation installments. *Peniston v. C.*, 192M132, 255NW860. See Dun. Dig. 4868d.

Where an employe, while working for same employer, sustained at two different times direct inguinal hernias from accidents and operative cures resorted to were not successful, and he is now permanently partially disabled and entitled to compensation from the employer, employer's insurer when first accident occurred, must bear an equal part with insurer who carried risk at time of second accident in payment of compensation and medical care. *Carpenter v. A.*, 194M79, 259NW535. See Dun. Dig. 10391.

This act is not retroactive, and the rates adopted apply only to contracts of insurance entered into after July 1, 1931. Op. Atty. Gen., May 20, 1931.

Employer cannot deduct certain percentage of employe's wages and apply same on premium of employe's insurance. Op. Atty. Gen. (523a-4), June 11, 1934.

State agricultural society has no authority to take out workmen's compensation insurance for its employees. Op. Atty. Gen. (4a), Mar. 27, 1935.

4290. Certain persons liable as employers—Contractors—Subcontractors, etc.—(1) Any person who creates or carries into operation any fraudulent scheme, artifice or device to enable him to execute work without himself being responsible to the workman for the provisions of this act, shall himself be included in the term "employer" and be subject to all the liabilities of the employers under this act. But this section shall not be construed to cover or mean an owner who lets a contract to a contractor in good faith. Provided, however, that no person shall be deemed a contractor or sub-contractor, so as to make him liable to pay compensation within the meaning of this section, who performs his work upon the employers' premises and with the employers' tools or appliances and under the employers' directions; nor one who does what is commonly known as "piece work" or in any way where the system of employment used merely provides a method of fixing the workman's wages.

(2) Where compensation is claimed from or proceedings taken against a person under subdivision (1) of this section, the compensation shall be calculated with reference to the wage the workman was receiving from the person by whom he was immediately employed at the time of the injury.

(3) The employer shall not be liable or required to pay compensation for injuries due to the acts or omissions of third persons not at the time in the service of the employer, nor engaged in the work in which the injury occurs, except as provided in Section 31 (4291), or under the conditions set forth in Section 66j [§4326(j)].

(4) Whenever any sub-contractor fails to comply with provisions of Section 4288, General Statutes 1923, the general contractor, intermediate contractor or sub-contractor shall be liable for all compensation benefits to employees, of all subsequent sub-contractors engaged upon the subject matter of the contract, and injured on, in, or about the premises. Any person paying such compensation benefits under the provisions of this paragraph shall be subrogated to the rights of the injured employe against his immediate employer; or any person whose liabilities for compensation benefits to the employe is prior to the liability of the person paying such compensation benefit. The liabilities arising under this paragraph may be determined by the industrial commission. ('21, c. 82, §30; Apr. 19, 1929, c. 252, §1.)

Sec. 2 of Act Apr. 19, 1929, c. 252, provides that the act shall take effect from and after July 1, 1929.

Evidence held to sustain finding that owner of truck who hauled timber at an agreed price per cord was an employe. *Barker v. B.*, 184M366, 238NW692. See Dun. Dig. 10394.

One paid by the job to wash windows of a school building under construction and nearing completion held an employe and not an independent contractor. *Wass v. B.*, 185M70, 240NW464. See Dun. Dig. 10395.

Finding that one cleaning and painting smokestack for specified amount was employe, sustained. *Fuller v. N.*, 189M134, 248NW756. See Dun. Dig. 10395(65).

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter the tools, was an employe or an independent contractor, held question of fact for industrial commission. *Rick v. N.*, 196M 185, 264NW685. See Dun. Dig. 10395.

Subdivision 1.

Widow accepting compensation for death of husband held not real party in interest in an action against third party. *Prebeck v. V.*, 185M303, 240NW890. See Dun. Dig. 10407, 10408.

Subdivision 4.

County held not be a "general contractor," "intermediate contractor" or "subcontractor" within meaning of subdivision. Op. Atty. Gen. (844c-3), June 11, 1934.

County engaging an independent contractor is not liable for liability insurance premium to insurer of county. Id.

4291. [Repealed.]

Repealed, effective July 1, 1937, by Laws 1937, c. 64, §10, ante, §4272-10.

1. In general.

The public highway cannot be said to be premises within this section; and employe of one riding as guest in automobile driven by the servant of another, might maintain an action against the owner of the automobile.

though he had received compensation from his employer. *Liggett & Myers Tob. Co. v. D.* (CCA8), 66F(2d)678.

Increased workmen's compensation insurance premiums which plaintiff had to pay in consequence of an employee's death caused by a negligent act of defendant, a subcontractor, are too remote and indirect results of such wrongful act to be recoverable. *Northern States Contracting Co. v. O.*, 191M88, 253NW371. See Dun. Dig. 7003, 10408.

Evidence that plaintiff previously had received workmen's compensation for injury now sued for should not be admitted on new trial if evidence there produced is same as on first trial. *Guile v. G.*, 192M548, 257NW649. See Dun. Dig. 454.

Employee struck by automobile of another employee while on a private street used by several employers in common, held not injured in an accident arising out of or in the course of employment or upon the working premises of his employer, and workmen's compensation act did not apply in action against driver of automobile. *Helfrich v. R.*, 193M107, 258NW26. See Dun. Dig. 10405.

Farm employee having applied for and received compensation from his employer was not in a position to claim that he was employee of another farmer to whom he was loaned by his employer to repay work owed. *Egan v. E.*, 193M165, 258NW161. See Dun. Dig. 10407.

A company owning a large warehouse and leasing part of it to another company and milk company delivering milk to employees of tenant at time of injury to employee of warehouse company, were not engaged in same or related purposes so as to confine injured employee's right to compensation and bar his cause of action against milk company for negligence. *Horgen v. F.*, 195M159, 262NW 149. See Dun. Dig. 10407.

Where employee of a telephone company, while attempting to locate trouble on a telephone line caused by a contact between a telephone wire and a power line wire, was injured when an employee of power company attempting to remedy a similar difficulty inserted a new fuse which carried a high voltage to wire on which plaintiff was working, he is not barred from recovery against power company by accepting of compensation from his employer. *Anderson v. I.*, 195M528, 263NW612. See Dun. Dig. 10409.

Plaintiff's employer and defendant held not to be engaged either "in furtherance of a common enterprise" or "the accomplishment of the same or related purposes," so as to make receipt of compensation a bar to recovery for defendant's negligence. *Taylor v. N.*, 196M22, 264NW 139. See Dun. Dig. 10408.

State held not entitled to recover from railroad for injuries to grain inspector. *State v. Sprague*, 201M415, 276NW744. See Dun. Dig. 10408.

Conflict of laws. 20MinnLawRev19.

Recovery of damages for negligence from third party also. 20MinnLawRev323.

2. Subd. 1.

Neither electrician, nor his electric company through him, was engaged in due course of business in furtherance of a common enterprise, because electrician on request of employee of plate glass company undertook to assist the latter for a few minutes in moving glass, electric company and glass company being merely subcontractors engaged in totally unrelated activities. *Pittsburgh Plate Glass Co. v. C.* (CCA8), 98F(2d)533.

Employee awarded compensation cannot subsequently sue third party subject to the act. 177M410, 225NW391.

Express company driver, accepting compensation from employer, could not recover against owner of building operating an elevator in violation of law. 178M47, 225 NW901.

Taxi drivers working for different companies, were not engaged in the furtherance of a common enterprise when they collided on a city street, and one of the taxi drivers could recover from the company owning the other taxi, although he had accepted compensation from his own company. 177M579, 225NW911.

Employee prosecuting a proceeding against his employer for compensation to a final decision on the merits, is barred from suing the third party. 178M313, 227NW 47.

Ignorance of law is immaterial. 178M313, 227NW47. Employer who willfully assaults his employe stands in no better position than a stranger, and cannot assert that the remedy is under the compensation act. *Boek v. W.*, 180M556, 231NW233(2).

Meat market employe, injured while delivering meat to a cafe in a hotel by negligence of a contractor repairing the hotel premises, held not precluded, by recovery from parties responsible for the negligence, from recovering difference between recovery and compensation, his employer not being engaged in a "related purpose" with such third persons. 181M232, 232NW114. See Dun. Dig. 10407(91).

In suit by employer against employe to recover for death of another employe, defendant may set up contributory negligence of employer and other employe. *Thornton Bros. Co. v. R.*, 188M5, 246NW57. See Dun. Dig. 10408.

Employee of a corporation repairing electric elevators, elevator operator of concern having one of two elevators repaired, owner of elevators, and corporation were engaged in the course of business (a) in furtherance of a common enterprise, and (b) the accomplishment of the same or related purposes in operation on the premises

where the injury was received at the time thereof, and employe is barred from maintaining action against building owner. *Seidel v. N.*, 202M569, 279NW570. See Dun. Dig. 10407.

Where a man employed by city at its incinerator plant was injured by alleged negligence of an employee of vendor who was delivering coal to city at plant, the employers, though both subject to part two of workmen's compensation act, were not engaged in furtherance of a common enterprise or accomplishment of same or related purposes. *Tevoght v. P.*, 285NW893. See Dun. Dig. 10407.

3. Subdivision 2.
174M466, 219NW755.

Oil station performing services on truck of owner, and bakery for which owner worked on commission basis, held not engaged in a common enterprise or the accomplishment of the same purpose, and truck owner who fell through manhole in floor of washroom was not precluded from recovering from oil station by reason of his having received compensation from bakery. *Phillips Petroleum Co. v. M.* (USCCA8), 84F(2d)148.

Issue of contributory negligence, held properly left to the jury. *Id.*

Defendant had burden of proving contributory negligence. *Id.*

Instructions given and denial of others, approved. *Id.* Employee of farmer receiving injuries at defendant's elevator while hauling grain from farm of one to whom his employer was trading work, having received compensation from his employer, had no right to sue proprietor of elevator for negligence. *Egan v. E.*, 193M165, 258NW 161. See Dun. Dig. 10407.

Brewing company and warehouse company held engaged in furtherance of a common enterprise and in accomplishment of related purposes and court properly assessed damages to employee of former injured on elevator in warehouse. *Smith v. K.*, 197M558, 267NW478. See Dun. Dig. 10407.

In action by city employee against street railway company for personal injuries, evidence in regard to workmen's compensation received by plaintiff was properly excluded. *Peterson v. M.*, 202M630, 279NW588. See Dun. Dig. 9033, 10407.

4202. Penalties for unreasonable delay.

This section held not applicable to facts of case. 173 M481, 217NW680.

4203. Employers must report accidents—Reports—

Duty of physicians—Right of attorney to examine—

Penalties.—It is hereby made the duty of every employer subject to the provisions of part 2 of this act to make or cause to be made a report to the Industrial Commission of any accident to any employe which occurs in the course of his employment, and which causes death or serious injury, within forty-eight (48) hours of the occurrence of such accident, and of all other accidents which occur to any employe in the course of his employment, and of which the employer or his foreman has knowledge, within seven days after the occurrence of such accident, provided that such injuries are sufficient wholly or partially to incapacitate the person injured from labor or service for more than the remainder of the day, shift or turn on which the injury was sustained, which reports shall be made upon a form to be prescribed by the Industrial Commission.

The Industrial Commission shall include in the form of report prepared by it a statement that the employer will pay the compensation as required by law, to be signed by the employer or his representative, where a liability to pay compensation is admitted.

Accidents required by this section to be reported within 48 hours may be reported by telephone, telegraph or personal notice, and a written report of such accident shall then be made within seven days, or at such time as the Industrial Commission shall designate, and the commission may require such supplementary reports of any accident as it may deem necessary for the securing of the information required by law; provided that, when an accident has been reported which subsequently terminates fatally, a supplemental report shall be filed with the Industrial Commission within forty-eight (48) hours after receipt of knowledge of such death, stating that the injury has proved fatal and any other facts in connection with such death or as to the dependents of such deceased employe which the Industrial Commission may require.

Every physician or surgeon who shall examine, treat or have special knowledge of any injury to

any employe compensable under part 2 of this act shall within ten days after receipt of any request therefor, in writing, made by the Industrial Commission, report to the commission all facts within his knowledge relative to the nature and extent of any such injury and the extent of any disability resulting therefrom, upon a form to be prescribed by the commission.

It is hereby made the duty of the Industrial Commission, from time to time and as often as may be necessary, to keep itself fully informed as to the nature and extent of any injury to any employe compensable under part 2 of this act and the extent of any disability resulting therefrom and the rights of such employe to compensation; to request in writing and procure from any physician or surgeon examining, treating or having special knowledge of any such injury a report of the facts within his knowledge relative thereto.

Any employer or physician or surgeon who shall fail to make any report required by this section, in the manner and within the time herein specified, shall be liable to the state of Minnesota for a penalty of fifty (\$50.00) dollars for each failure, and such penalty shall be recovered in a civil action brought in the name of the state by the attorney general in any court having jurisdiction thereof, and it shall be the duty of the Industrial Commission, whenever any such failure to report occurs, to immediately certify the fact thereof to the attorney general, and upon receipt of any such certification the attorney general shall forthwith commence and prosecute such action. All penalties recovered by the state hereunder shall be paid into the state treasury.

No such report nor part thereof, nor any copy of the same or part thereof shall be open to the public, nor shall any of the contents thereof be disclosed in any manner by any official or clerk or other employe or person having access thereto, but the same may be used upon the hearings under this act or for state investigations and for statistics only, and any such disclosure is hereby declared to be a misdemeanor and punishable as such.

For the purpose of determining the merits of a compensation claim the Commission may, however, permit examination of its file in a compensation case by an attorney at law upon the furnishing to the Commission written authorization therefor, signed by the employe, his dependent or dependents, the employer or insurer, as the case may be.

Any employer or insurer or injured employe shall, upon request of the Industrial Commission, file with said commission all medical reports in the possession of such employer or insurer having any bearing upon the case or showing the nature and extent of disability; provided that duly verified copies of such reports may be filed with the Industrial Commission in lieu of the originals. (As amended Apr. 14, 1939, c. 241.)

177M555, 225NW889.

Pease v. M., 196M552, 265NW427; note under §4282.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. Clausen v. M., 186M30, 242NW397. See Dun. Dig. 10420.

Prohibition against admitting reports into evidence applies only to those reports submitted to Industrial Commission, not reports submitted to insurance companies or others. Hector Const. Co. v. B., 194M310, 260NW496. See Dun. Dig. 3348.

Where employer has made no written report of accident, there can yet be no recovery of compensation unless proceeding before commission be commenced within six years from date of accident. Lunzer v. W., 195M29, 261NW477. See Dun. Dig. 10419.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employe his full wage for some time after accident while disabled, the arrangement between the employer and the employe not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. *Id.*

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

4294. Duties of commission when employee is injured.

Pease v. M., 196M552, 265NW427; note under §4282.

4295. Employer to notify commission of discontinuance of payments.—Before discontinuing the payment of compensation in any case coming under part 2 of this act, the employer shall, if it is claimed by or on behalf of the injured person or his dependents that his right to compensation still continues, or if such employe or his dependents shall refuse to sign or object to signing a final receipt, notify the Industrial Commission, in writing, of such proposed discontinuance of payment, with the date of discontinuance and the reason therefor, and that the employe or dependent, as the case may be, objects thereto, and such employer shall also file with such notice of discontinuance any medical reports in his possession bearing upon the physical condition of the injured employe at or about the time of the discontinuance of the compensation, or duly verified copies of such reports in lieu of the originals; and until such notice is given, and such reports filed, as aforesaid, the liability for the making of such payments shall continue unless otherwise ordered by the Commission; provided, that the receipt of any such notice of discontinuance, together with such reports, by the Commission, as herein provided, shall operate as a suspension of payment of compensation until the right thereto can be investigated, heard and determined, as herein provided. It is hereby made the duty of the Industrial Commission forthwith, upon receipt of any such notices of discontinuance, to notify the employe of the receipt thereof and mail him a copy of the same, together with copies of the reports filed with such notice, at his last known place of residence, and to make such investigations and inquiries as may be necessary to ascertain and determine whether the right to compensation in any such case has terminated in accordance with law, and if upon investigation it shall appear that the right to compensation in any such case has not terminated or will not terminate upon the date specified in any such notice of discontinuance, the Industrial Commission shall set down for hearing before the Commission, or some commissioner or referee, the question of the right of the employe, or dependent, as the case may be, to further compensation, such hearing to be held within 25 days of the receipt by the Commission of any such notice of discontinuance, and 8 days notice of such hearing shall be given by the Commission to the interested parties.

After the hearing by the Commission, commissioner or referee, and due consideration of all the evidence submitted, the Commission, commissioner or referee, shall promptly enter an order or award for such further amount of compensation to be paid by the employer, if any, as may be due and payable. If upon investigation it shall appear that the right to compensation in any such case has terminated, the Commission shall forthwith notify the employer in writing of such fact and the receipt of such notice by the employer shall operate to relieve him and the insurance carrier, as of the date when payment of compensation became suspended as provided by this section, from any further liability for payment of compensation in such case, subject to the right of review provided by this act, and subject to the right of the Commission, at any time prior to said review, to set aside its decision, or that of the referee, and grant a new hearing pursuant to Section 4319, General Statutes 1923.

In addition to the filing of the reports required by law, all employers subject to part 2 of this act shall promptly file or cause to be filed with the Industrial Commission all current interim and final receipts for the payments of compensation made, and it is hereby made the duty of the Industrial Commission periodically to check the records of such commission in each case, and require such employers to file or cause to be filed all such receipts for compensation pay-

ments as and when due, it being the intention of this section that the Industrial Commission shall definitely supervise and require prompt and full compliance with all provisions for the payment of compensation as required by law. Any insurance carrier insuring any employer in this State against liability imposed by this Act shall be and hereby is authorized and empowered for and on behalf of said employer to perform any and all acts required of the employer under the provisions of this Act; provided, that the employer shall be responsible for all authorized acts of an insurer in his behalf and for any omission or delay or any failure, refusal or neglect of any such insurer to perform any such act, and nothing herein contained shall be construed to relieve the employer from any penalty or forfeiture provided by this act. ('21, c. 82, §35, par. 1, '25, c. 161, §9; Mar. 9, 1933, c. 74, §1.)

Sec. 2 of Act Mar. 9, 1933, cited, provides that the act shall take effect from its passage.

Stitz v. R., 192M297, 256NW173; note under §8812.

Evidence held to sustain industrial commission's decision that compensable disability terminated on certain date. Chesler v. C., 185M532, 242NW2.

Where there has been award of compensation in installments, which have been paid, and then issue is formally made whether there is right to additional compensation, decision of commission that right has terminated is final, subject only to review (by certiorari), as distinguished from rehearing. Rosenquist v. O., 187M375, 245NW621. See Dun. Dig. 10421.

Where compensation was declared at an end and rights of parties were finally determined and fixed prior to passage of chapter 74, Laws 1933, commission has no authority to grant a new hearing under this section, since substantive rights of parties are affected. Johnson v. J., 191M631, 255NW87. See Dun. Dig. 10421.

Where an employee suffers an injury, at time reported and conceded to be compensable, and employer or insurer pays compensation for several weeks and pursuant to §4295 files with Industrial Commission interim and final receipts, latter reporting history of case for determination of commission as to whether employee's rights have been fully protected and full compensation given, transaction amounts to a proceeding within §4319, which continues commission's jurisdiction. Nyberg v. L., 192M404, 256NW732. See Dun. Dig. 10421.

A final settlement approved by industrial commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v. C., 193M560, 259NW62. See Dun. Dig. 10418.

Lump sum settlement in 1926 carrying also weekly payment for 300 weeks, approved by the court and final receipt given by employee was a final disposition of the matter which could not be reopened in 1934, and a subsequent settlement of medical expenses under stipulation approved by the court did not constitute a reopening. Nadeau v. C., 194M285, 260NW213. See Dun. Dig. 10418.

Amendment by Laws 1933, c. 74, had no retroactive effect so as to authorize reopening compensation cases finally closed before the statute was amended. Id. See Dun. Dig. 10388.

Chapter 74, Laws 1933, so amended §4295 that industrial commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to §4319, which by amendment is incorporated into §4295. Hawkinson v. M., 196M120, 264NW438. See Dun. Dig. 10421.

Jurisdiction of industrial commission to vacate a decision rendered pursuant to this section was adequately raised so as to be reviewed on certiorari. Id. See Dun. Dig. 10426.

This section relates wholly to procedure, and amendment by Laws 1933, c. 74, applied to further compensation liability for accident occurring prior to its passage. Hawkinson v. M., 196M120, 265NW346. See Dun. Dig. 10417.

Where no writ of certiorari had issued to review an award made by Industrial Commission, award had not been reduced to judgment, and no statute of limitations barred such relief, jurisdiction of Industrial Commission continued, and it had power, for cause, to vacate prior award and grant a new hearing. Tuomi v. G., 196M617, 265NW837. See Dun. Dig. 10421.

Amendment of §4295 by Laws 1933, c. 74, in no way modified or affected §4319, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Maffett v. C., 198M480, 270NW596. See Dun. Dig. 10421.

To vacate a judgment entered in district court to enforce an award of industrial commission upon the ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. Id. See Dun. Dig. 10422.

Respective rights and obligations as to compensation and other benefits under workmen's compensation law become fixed as of date of compensable accident. If accident causes death, such rights become fixed at time of death. Roos v. C., 199M284, 271NW582. See Dun. Dig. 10410.

Jurisdiction of the commission is retained subject to §4319 until award of commission or its referee has been reduced to judgment or supreme court has issued certiorari to review it. Id. See Dun. Dig. 10421.

Amendment by Laws 1933, c. 74, affects procedurally and not rights of parties. Id.

An award of compensation cannot be set aside and a new hearing granted thereon under §4295, if award was made prior to amendment by Laws 1933, c. 74, §1, as a rehearing could then be granted only under §4319 for cause, record not showing cause. Herzog v. C., 199M352, 272NW174. See Dun. Dig. 10421.

Failure to give notice of discontinuance of compensation payments did not as a matter of law make employer liable to continue weekly voluntary payments started until proceeding for further compensation began, for commission may otherwise order. McGrath v. B., 203M326, 281NW73. See Dun. Dig. 10421.

4297. Proceedings began by petition.

Practice of demurring to a claim petition before commission is disapproved. Johnson v. P., 203M347, 281NW290. See Dun. Dig. 10421.

4301. Service by mail.

Jurisdiction may not be acquired over a non-resident employer by mailing of notices and other papers. Kling v. P., 194M179, 259NW309. See Dun. Dig. 10420.

4302. Procedure in case of dispute.

Right of employee to compensation arises at time of injury and belongs to him alone, and right of dependents to compensation arises at time of employee's death, and is a separate and distinct right belonging to them, and employee, during his lifetime, cannot deprive his dependents of their rights by a settlement made with employer. Nyberg v. L., 202M86, 277NW536. See Dun. Dig. 10419.

4303. Commission to give hearing on claim petition.

On appeal to commission from action of referee, the commission is a fact finding body and its jurisdiction as such must be exercised, and it is not bound by the findings of fact made by the referee. Olson v. C., 178M34, 225NW921.

Burden of proof is upon employee to show that injury was suffered in accident arising in course of employment. Jensvold v. K., 190M41, 260NW815. See Dun. Dig. 10406.

4304. Rehearing.

Application for a rehearing rests in the discretion of the Commission. 172M489, 216NW241.

Where record and affidavits make it clear that granting of rehearing rested in discretion of Commission its refusal of rehearing will not be disturbed on appeal. 172M603, 216NW242.

Where affidavits in support of a petition for rehearing indicate strongly that award was based in substantial degree upon false testimony, it is an abuse of discretion not to grant a rehearing. Meehan v. M., 191M411, 254NW584. See Dun. Dig. 10421.

It could not be first argued on employee's petition for rehearing that litigated issue was settled by pleading. Pease v. M., 196M552, 265NW427. See Dun. Dig. 10421.

4309. Commission to make award—Who may intervene.

Findings of industrial commission in proceeding against building contractor were not admissible in action at law against farmer and building contractor, who was acting as foreman in supervising construction of barn, plaintiff seeking recovery on theory that he was invitee while aiding farmer in construction, and the only material finding by the industrial commission being that plaintiff was not an employee of the building contractor, one ending commissioner's power to proceed further. Gilbert v. M., 192M495, 257NW73. See Dun. Dig. 10425.

4313. Commission not bound by rules of evidence.

The Commission and its referees are not subject to rules of evidence governing the courts. 172M549, 489, 216NW240, 241.

Proceedings are not governed by strict rules of evidence. 175M319, 221NW65.

Duty of commission to find certain facts under evidence, and review of findings. 175M489, 221NW913.

The absence of an appropriate label on a petition for a rehearing was not important though it was claimed that the proceeding was barred by §4282 in that it appeared from the pleading to be a new proceeding. 177M555, 225NW889.

A decision of industrial commission will not be disturbed because incompetent evidence was admitted. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421 (80).

Commission is not bound by strict rules of evidence, but its findings of fact must be based only upon competent evidence. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421(79).

Findings of industrial commission must be based upon competent evidence and cannot rest on pure hearsay. Bliss v. S., 189M210, 248NW754. See Dun. Dig. 10421n, 79.

Finding supported by competent evidence must be sustained though hearsay evidence was also received. *Anderson v. C.*, 190M125, 251NW3. See Dun. Dig. 10426.

Whether testimony, objected to as conversation with a person since deceased, was improperly admitted, was immaterial, where only conclusion possible under all other evidence in case was that industrial commission properly denied compensation. *Anderson v. R.*, 196M358, 267NW501. See Dun. Dig. 10421.

In arriving at a decision it is proper for commission to take into account not only interest of parties and witnesses in outcome and improbabilities involved, but also to inquire into all surrounding circumstances upon which an alleged claim of dependency is based. *Segerstrom v. N.*, 198M298, 269NW641. See Dun. Dig. 10421.

As affecting admissibility of statement of employee as a part of the res gestae, consideration should be given to facts that at time statement was made there was an entire lack of motive for the employee to misrepresent as where injury appeared so insignificant that employee could not have given a thought to subsequent application for compensation. *Jacobs v. V.*, 199M572, 273NW245. See Dun. Dig. 3300.

In workmen's compensation cases a liberal policy should be followed in admission of declarations as part of res gestae in order that purpose of compensation act be carried out. Certain statements made by deceased approximately forty-five minutes after accident held properly admitted as part of res gestae. *Id.* See Dun. Dig. 3301.

It was not error to exclude expert testimony that it was a practical route to drive from 1900 Princeton avenue, St. Paul, to the St. Paul Hotel, through intersection of Colborne and West Seventh streets, where decedent met with fatal accident. *Bronson v. N.*, 273NW681. See Dun. Dig. 10421.

In proceeding under Workmen's Compensation Act to recover compensation for death of motorman suffering a heat stroke, it was not error to exclude from evidence records in office of vital statistics showing a high death rate due to extreme heat during the month involved. *Ruud v. M.*, 202M480, 279NW224. See Dun. Dig. 10421.

In proceeding to obtain compensation for death of motorman suffering heat stroke refusal to admit in evidence experiment made with car operated by employee in respect to heat discharged in motorman's cab from operation of car, made several months after injury in question, was matter resting largely in discretion of commission to admit or reject. *Id.* See Dun. Dig. 10421.

In proceeding for death of motorman suffering heat stroke, it was not error to exclude offer of proof that no other claim for heat stroke had been made against street railway during its long operation of its street cars by electricity. *Id.* See Dun. Dig. 10421.

Commission did not err in excluding as conclusion of witness' testimony that injured employee was not able to hoe some corn he had planted, or walk, or lift a pail. *McGrath v. B.*, 203M326, 281NW73. See Dun. Dig. 10421.

Where witness gave testimony which indicated that he and not a township was employer when accidental injury arose, commission was not in error when it overruled or reversed ruling of referee striking out such testimony after witness was made party to proceedings. *Mooney v. T.*, 203M461, 281NW820. See Dun. Dig. 10421.

Statute prohibiting interested parties from testifying as to conversations with persons since deceased applies to proceedings under this act. *Kayser v. C.*, 204M74, 282NW801. See Dun. Dig. 10421.

Where there has been a hearing before commission on employee's claim for compensation, and later, his death having intervened, his dependents petition for compensation, claiming that his death was caused by same accident, record of hearing on employee's claim may be considered in evidence on hearing of that of his dependents. While claims are independent each of the other, proceeding for their enforcement is unitary. *Susnik v. O.*, 286NW249. See Dun. Dig. 10421.

Res Gestae, 22MinnLawRev391.

Evidence before administrative tribunals. 23MinnLaw Rev68.

4315. Appeals to industrial commission—Time—Notice—Fee—Transcript—Determination. — A n y party in interest may, within thirty days after notice of a commissioner's or referee's award or disallowance of compensation, or other order involving the merits of the case, shall have been served on him, take an appeal to the Industrial Commission on the ground: (1) That the award or disallowance of compensation or other order appealed from is not in conformity with the terms of this act, or that the commissioner or referee committed any other error of law; (2) that the findings of fact and award or disallowance of compensation, or other order appealed from, was unwarranted by the evidence, or was procured by fraud, coercion or other improper conduct of any party in interest. The commission may, upon cause shown within said thirty days, extend the time for taking such appeal or for filing of an answer or

other pleading for not to exceed thirty additional days.

Any party desiring to appeal to the commission as aforesaid shall prepare and sign a written notice, specifying the award or order appealed from and that the said appellant appeals therefrom to the Industrial Commission, and specifying the particular finding of fact which appellant claims is unwarranted by the evidence or which appellant claims was procured by fraud, coercion or other improper conduct of any party in interest, or specifying any other ground upon which the appeal is based. The appealing parties shall also within the time limited for appeal serve a copy of such written notice of appeal upon all adverse parties and file the original thereof with the Industrial Commission, with proof of service thereon by admission or affidavit. The appealing parties shall also within the time limited for appeal pay to the Industrial Commission the sum of ten dollars (\$10.00), to be applied on the cost of the transcript of the proceedings appealed from, or so much thereof as may be necessary to present the question raised on such appeal. The appellant shall also be liable for any excess of said ten dollars (\$10.00), in the cost of said transcript, and any part of said sum exceeding the actual cost of said transcript shall be refunded to said appellant; provided that the commission may, on cause shown, direct that a transcript be made without expense to the appellant.

Upon the filing of said notice and the paying of said appeal fee, the commission shall immediately cause the transcript of testimony and proceedings to be typewritten, which said transcript shall be certified as true and correct by the official reporter transcribing the same.

On any such appeal the commission may disregard the findings of fact of the commissioner or referee, and may examine the testimony taken before such commissioner or referee, and, if it deem proper, may hear other evidence, and may substitute for the findings of the commissioner or referee such findings of fact as the evidence taken before the commissioner or referee and the commission, as hereinbefore provided, may, in the judgment of the commission, require, and may make such disallowance or award of compensation or other order as the facts so found by it may require. The commission, at its expense, shall cause a complete record of its proceedings to be made, and shall provide a stenographer to take the testimony and record of proceedings at the hearings before a referee, commissioner or the commission, and said stenographer shall furnish a transcript of such testimony or proceedings to any person requesting it upon payment to him of a reasonable charge therefor, to be fixed by the commission. (As amended Apr. 8, 1939, c. 150.)

On appeal to commission from action of referee, the commission is a fact finding body and its jurisdiction as such must be exercised, and it is not bound by the findings of fact made by the referee. *Olson v. C.*, 178M34, 225NW921.

The view of the referee that the relator should have disclosed confidential information as to what an examination to his eye showed was not prejudicial on a trial de novo by the commission on appeal. *Thompson v. L.*, 181M533, 233NW300. See Dun. Dig. 10423.

Failure of employee to make a deposit of \$10 within 20 days after service of notice of his appeal from an adverse decision of referee, did not require commission to grant a motion to dismiss such appeal. *Rutz v. T.*, 191M227, 253NW665. See Dun. Dig. 8954, 10385.

On appeal from referee to commission there is a trial de novo and commission is fact-finding body upon record before it. *Sentieri v. O.*, 201M293, 276NW210. See Dun. Dig. 10423.

Procedure before commission is not statutory procedure governing courts, and to a great extent commission regulates its own procedure, and may approve or disapprove rulings of its referee as it deems proper. *Mooney v. T.*, 203M461, 281NW820. See Dun. Dig. 10423.

4317. Appeal based on fraud, etc.

175M539, 221NW310; note under §4139.

4318. Proceedings in case of default—Entry of judgment upon awards.—On at least thirty days' default in the payment of compensation due under any

award made under part 2 of this act, employe or dependents entitled to such compensation may file a certified copy of such award with the clerk of the district court of any county in the state, and on ten days' notice in writing to the adverse parties, served as provided by law for service of a summons, may apply to the judge of any district court for judgment thereon. On such hearing the judge of such court shall have the right to determine only the facts of said award and the regularity of the proceedings upon which said award is based, and shall order judgment accordingly, and such judgment shall have the same force and effect, and may be vacated, set aside, or satisfied as other judgments of the same court; provided, that no judgment shall be entered on an award while an appeal is pending. There shall be but one fee of 25c charged by said clerk for services in each case under this section, and said fee shall cover all services performed by him. An employe or dependent shall be entitled to entry of judgment for only such sums as are by the award payable to him. If any such award provides for the payment of money to a person other than such employe or dependent, such other person may by the same procedure obtain an entry of judgment for such sum as is payable to him by such award. ('21, c. 82, §58; '23, c. 300, §11; Apr. 29, 1935, c. 314, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

172M46, 214NW765; note under §4319.

177M555, 225NW889.

The approval of a settlement in a workmen's compensation matter under the Act of 1913, c. 467, is not a judgment, as regards limitations. 176M554, 223NW926.

Where an employe left to its insurer defense of a petition for compensation, after an award was made and reduced to judgment, insurer having become insolvent, district court had power to set aside judgment for "excusable neglect" of employe so that it might petition industrial commission for a rehearing of matter on merits. Meehan v. M., 191M411, 254NW584. See Dun. Dig. 4875d.

To vacate a judgment entered in district court to enforce an award of industrial commission upon ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. Maffett v. C., 198M480, 270NW596. See Dun. Dig. 10422.

Where, in absence of dependents, industrial commission determines that an employer shall make payment to special compensation fund, decision is not award of "compensation" under this section. Schmah v. S., 274NW168.

Where, in case of death of employe in course of his employment, there are no dependents and employer is obliged to make payment to special compensation fund, his liability is one created by statute, and proceeding to recover same must be commenced within six years from accrual of cause of action. Id. See Dun. Dig. 10419.

4319. New hearing may be granted.

Whether an employe is entitled to a rehearing after an award rests in the discretion of the Industrial Commission. 172M46, 214NW765.

Granting or denying a new hearing is in the discretion of the Industrial Commission, and such discretion held not abused under the facts of this case. 172M521, 216NW227.

Where an award of compensation has been affirmed by the Supreme Court and remanded, the Industrial Commission is without power to grant a new hearing. 174M153, 218NW550.

The granting of a rehearing after an award rests in the sound discretion of the Industrial Commission. Delich v. T., 175M612, 220NW408.

Relief against fraudulent settlement must be applied for before the Industrial Commission and not by an action in equity in district court to set it aside. 175M539, 221NW910.

An attempted appeal, when certiorari was the proper method of review, conferred no jurisdiction to render judgment and was not a bar to a reopening of the proceeding upon application of either party although the Supreme Court expressed an opinion on the merits. 177M555, 225NW889.

Granting or refusal to grant an application for a rehearing rested in the discretion of the commission. 178M464, 227NW567.

The grant of a rehearing rests in the discretion of the Industrial Commission. 179M321, 229NW138.

There is no statute limiting the time within which the industrial commission may grant a rehearing on the propriety of further allowance of medical benefits necessitated by original injury. Kummer v. M., 185M516, 241NW681. See Dun. Dig. 10421.

Application for compensation for retraining rests in original proceeding, and is not an independent proceeding that will be barred by statute of limitations, ignor-

ing original proceeding of which it is a part. Vierling v. S., 187M252, 245NW150. See Dun. Dig. 10419.

Upon record, industrial commission did not abuse its discretion by vacating an order denying additional compensation for retraining and granting an application of employe for permission to submit further evidence. Vierling v. S., 187M252, 245NW150. See Dun. Dig. 10421.

Word "award" is construed as synonymous with "decision" so as to allow to an employe denied compensation same right to petition for and procure a rehearing as is given to employer and insurer when compensation is allowed. Rosenquist v. O., 187M375, 245NW621. See Dun. Dig. 10421.

Industrial commission did not abuse its discretion in refusing to grant rehearing to employe whose injury was originally compensated, where medical testimony as to present condition was in dispute. State v. A. C. Ochs Brick & Tile Co., 187M586, 246NW249. See Dun. Dig. 10421.

Where the record discloses that no objection was made before industrial commission, upon jurisdictional grounds, to application to vacate an award, nor any objection that no good cause has been shown for vacation, relator-insurer will not be heard to raise question for first time in supreme court. Mark v. K., 188M1, 246NW472. See Dun. Dig. 10426.

Granting of rehearing rests in discretion of industrial commission. Cooper v. M., 188M560, 247NW805. See Dun. Dig. 10421(§1).

Industrial commission did not abuse its discretion in denying rehearing on ground of newly discovered evidence which was merely cumulative. Olson v. D., 190M426, 252NW78. See Dun. Dig. 10421.

Granting of rehearing rests with industrial commission except where it appears that judicial discretion has been abused. Id.

Where an employe suffers an injury, at time reported and conceded to be compensable, and employer or insurer pays compensation for several weeks and pursuant to §4295 files with Industrial Commission interim and final receipts, latter reporting history of case for determination of commission as to whether employe's rights have been fully protected and full compensation given, transaction amounts to a proceeding within §4319, which continues commission's jurisdiction. Nyberg v. L., 192M404, 256NW732. See Dun. Dig. 10421.

A final settlement approved by industrial commission and final payment made thereunder becomes final at expiration of time permitted for review thereof. Falconer v. C., 193M560, 259NW62. See Dun. Dig. 10418.

Lump sum settlement in 1926 carrying also weekly payment for 300 weeks, approved by the court and final receipt given by employe was a final disposition of the matter which could not be reopened in 1934, and a subsequent settlement of medical expenses under stipulation approved by the court did not constitute a reopening. Nadeau v. C., 194M285, 260NW213. See Dun. Dig. 10414.

Six-year statute of limitations ran against right to recover compensation where employer paid injured employe his full wage for some time after accident while disabled, the arrangement between the employer and the employe not constituting a proceeding or any part of a proceeding which would furnish a basis for a reopening. Lunzer v. W., 195M29, 261NW477. See Dun. Dig. 10419.

Affirmance of an order of commission denying a petition to reopen case and grant a rehearing ended case and industrial commission thereafter had no further jurisdiction to entertain another application for rehearing. Frederickson v. E., 195M660, 261NW479. See Dun. Dig. 10421.

A final settlement approved by industrial commission with final payment made thereunder becomes final at expiration of time permitted for review, and commission cannot reopen. Id.

Industrial commission had no power to vacate settlement, and its award based thereon, and grant a petition for rehearing. Dorfman v. F., 195M19, 261NW879. See Dun. Dig. 10421.

Chapter 74, Laws 1933, so amended §4295 that industrial commission retains authority and jurisdiction to vacate for cause a decision rendered thereunder and grant a rehearing pursuant to §4319, which by amendment is incorporated into §4295. Hawkinson v. M., 196M120, 264NW438. See Dun. Dig. 10421.

By amendment of §4295 by Laws 1933, c. 74, commission retains its jurisdiction with power to open its decision made upon an accident occurring prior to passage of amendment. Hawkinson v. M., 196M120, 265NW346. See Dun. Dig. 10421.

Where no writ of certiorari had issued to review an award made by Industrial Commission, ward had not been reduced to judgment, and no statute of limitations barred such relief, jurisdiction of Industrial Commission continued, and it had power, for cause, to vacate prior award and grant a new hearing. Tuomi v. G., 196M617, 265NW837. See Dun. Dig. 10421.

Granting of a rehearing on ground of newly discovered evidence rests in discretion of industrial commission. Pechavar v. O., 198M233, 269NW417. See Dun. Dig. 10421.

Amendment of §4295 by Laws 1933, c. 74, in no way modified or affected §4319, and application to commission to set aside award and grant rehearing must be made before decision has passed into judgment in district court. Maffett v. C., 198M480, 270NW596. See Dun. Dig. 10421.

To vacate a judgment entered in district court to enforce an award of industrial commission upon the ground of mistake of fact, court must be governed by same considerations and principles that govern vacation of any judgment of district court. *Id.* See Dun. Dig. 10422.

When an award of compensation has been made, jurisdiction of industrial commission continues, subject to provisions of this section as long as there is a continuing right to compensation. *Roos v. C.*, 199M284, 271NW582. See Dun. Dig. 10421.

Words "for cause" mean some such cause as fraud or surprise, and rehearing cannot be based upon very facts contained in a written statement furnished complaining party. *Herzog v. C.*, 199M352, 272NW174. See Dun. Dig. 10421.

An award of compensation cannot be set aside and a new hearing granted thereon under §4295 if award was made prior to amendment by Laws 1933, c. 74, §1, as a rehearing could then be granted only under §4319 for cause, record not showing cause. *Id.*

Commission properly granted rehearing of petition for further compensation by reason of newly discovered evidence resulting from an operation. *Jovanovich v. S.*, 201M412, 276NW741. See Dun. Dig. 10421.

Where employee appeared generally, without objection, at a rehearing ordered by commission, without application or notice, he will not be heard to question jurisdiction of commission to order rehearing when matter comes to supreme court for review. *Baudek v. O.*, 285NW887. See Dun. Dig. 10426.

4320. Appeal to Supreme Court—Grounds—Fees.

175M103, 220NW408; note under §4319.
A reasonable deduction from circumstantial evidence will be sustained on appeal. 172M439, 215NW678.

The above rule applies where a taxi driver was murdered by an intoxicated passenger arising from a quarrel over fare. *Id.*

Writ of certiorari must be served upon the adverse party or his attorney, in view of §§9240, 9769, 9770. 172M98, 214NW795.

Findings of commission must prevail unless they are clearly and manifestly contrary to the evidence. 174M94, 218NW243.

The Supreme Court cannot reverse where there is evidence reasonably tending to sustain the findings of fact. 174M376, 217NW292.

Findings of Commission must remain undisturbed, if there is evidence reasonably tending to sustain them, or unless they are manifestly and clearly contrary to the evidence. The Commission is not necessarily concluded by undisputed testimony although it must assume as credible witnesses, unless inherently improbable. 175M51, 220NW401.

Duty of commission to find certain facts under evidence, and review of findings. 175M489, 221NW913.

Finding on conflicting evidence that physical condition was not affected or aggravated by a fall, must be sustained. *Koppe v. H. & T.*, 176M508, 223NW787.

Findings of Commission will be sustained unless clearly without support in the evidence. 177M503, 225NW428.

Commission's findings on fact question is final. *Holmberg v. A.*, 177M469, 225NW439.

Determination of Commission must stand if reasonable minds might reach different conclusions. 177M519, 225NW652.

An abortive appeal, although accompanied by the expression of an opinion on the merits, was not equivalent to review by certiorari wherein there would have been jurisdiction to render judgment on the merits, and there was no bar to a reopening of the proceeding on application of either party under §4319. 177M555, 225NW889.

Findings of fact supported by evidence must be sustained. 178M279, 226NW767.

Findings as to cause of death based on evidence could not be disturbed. *Hedquist v. P.*, 178M524, 227NW856.

Failure to transmit return to Supreme Court in 30 days did not oust such court of jurisdiction. *Hedquist v. P.*, 178M524, 227NW856.

On certiorari to review decision of Industrial Commission the title of the proceeding does not change in the appellate court. *Kopp v. B.*, 179M158, 228NW559.

Determination of Industrial Commission contrary to positive undisputed testimony reversed. 179M177, 228NW607.

Whether act of employe was done for purpose of saving employer's property, held a question of fact for determination of Industrial Commission. 179M272, 228NW931.

Decision of Industrial Commission cannot be reviewed on certiorari after the expiration of thirty days from notice of determination. 179M321, 229NW138.

Findings of the Commission having adequate support in the evidence are determinative on certiorari in the supreme court. 179M416, 229NW561.

Finding of commission that there was no causal connection between fall and resulting cancer reversed and remanded for further evidence. *Hertz v. W.*, 180M177, 230NW481(2).

Whether carpenter sent out by employer to work on school building 135 miles from employer's residence was in course of employment in returning over week-end, held a question of fact, and finding of commission

against claim for compensation was binding on supreme court. 180M473, 231NW188.

The court will not disturb the finding of the Industrial Commission that relator did not suffer an inguinal hernia where relator's testimony is both contradicted and impeached. *Naslund v. F.*, 181M301, 232NW342. See Dun. Dig. 10426.

Findings of fact by the commission must be sustained unless they are manifestly contrary to the evidence. 181M398, 232NW716. See Dun. Dig. 10426.

Decision of fact issue by Industrial Commission will not be disturbed on certiorari. 181M546, 233NW245. See Dun. Dig. 10426(15).

There being credible testimony in its support, an order of the Industrial Commission will not be reversed. *Tevik v. L.*, 182M244, 234NW320. See Dun. Dig. 10426(26).

Finding of Industrial Commission that one was employe at time of accident is a finding of fact which cannot be reversed if reasonably sustained by evidence. *Frederick v. F.*, 183M243, 236NW322. See Dun. Dig. 10426.

A finding of the Industrial Commission upon a question of fact cannot be disturbed unless consideration of the evidence and the inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to the one at which the commission arrived. *Jones v. E.*, 183M531, 237NW419. See Dun. Dig. 10426(24), (25), (26), (27), (28).

There is evidence to support negative finding of the Industrial Commission, and it will not be disturbed. *Klugman v. C.*, 183M541, 237NW420. See Dun. Dig., 10426(26).

Decision of Industrial Commission will not be disturbed unless evidence and inferences permissible therefrom require reasonable minds to adopt a contrary conclusion. *Farley v. N.*, 184M277, 238NW485. See Dun. Dig. 10426(24).

Where there is a clear conflict in the evidence as to the causal connection between a strain and a subsequent disability, Supreme Court will not disturb the finding of the Industrial Commission. *Hoefin v. R.*, 184M360, 238NW676. See Dun. Dig. 10426.

A memorandum attached to a decision of the Industrial Commission may not be resorted to to show that its justifiable findings are not based upon a tenable theory. *Wheeler v. W.*, 184M538, 239NW253. See Dun. Dig. 0426.

Finding of Industrial Commission upon questions of fact will not be disturbed when reasonable minds may reach conclusion in accord with that of commission. *Brameld v. A.*, 186M39, 242NW465. See Dun. Dig. 10426.

Refusal of Industrial Commission to vacate award and allow additional compensation, based on competent evidence, will not be disturbed on appeal. *Hanke v. N.*, 186M182, 242NW621. See Dun. Dig. 10426.

Where order of industrial commission, affirmed by supreme court, provides for further proceedings, commission may proceed to determination of issue so left open. *Hertz v. W.*, 186M173, 242NW629. See Dun. Dig. 10426.

Finding of Industrial Commission that person was employe must be sustained if reasonably supported by evidence and inferences. *Carter v. W.*, 186M413, 243NW436. See Dun. Dig. 10426.

Where certiorari has issued to review a decision by the industrial commission, but writ has been discharged without a hearing in this court, commission is not deprived of jurisdiction of case. *Johnson v. P.*, 187M362, 245NW619. See Dun. Dig. 10426.

Unless a consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a contrary conclusion, a finding by industrial commission upon a question of fact cannot be disturbed. *Zitzman v. M.*, 187M268, 245NW29. See Dun. Dig. 10426.

Finding of fact by industrial commission cannot be disturbed unless consideration of evidence clearly requires reasonable minds to adopt contrary conclusion. *Metcalf v. F.*, 187M485, 246NW28. See Dun. Dig. 10426.

Finding of industrial commission upon question of fact cannot be disturbed unless consideration of evidence and inferences permissible clearly require reasonable minds to adopt contrary conclusion. *Palumbo v. C.*, 187M508, 246NW36. See Dun. Dig. 10426.

In compensation case, rehearing was ordered for new evidence as to the cause of degeneration of spinal cord. *Sorenson v. L.*, 187M665, 246NW114. See Dun. Dig. 10421.

On certiorari to industrial commission to review an award of compensation, granted on rehearing after a previous award has been vacated, there may be reviewed order granting rehearing. *Mark v. K.*, 188M1, 246NW472. See Dun. Dig. 1402, 10426.

A decision of industrial commission will not be disturbed because incompetent evidence was admitted. *Cooper v. M.*, 188M560, 247NW805. See Dun. Dig. 10421-(80).

Denial of compensation by industrial commission will not be disturbed if record presents an issue of fact. *Ekelund v. W.*, 189M228, 248NW824. See Dun. Dig. 10426(24).

Finding that injured person was an employe must stand on appeal if fairly sustained by evidence. *Myers v. V.*, 189M244, 248NW824. See Dun. Dig. 10426(24).

A conclusion of industrial commission that death resulted from exertions in course of employment must be sustained if supported by sufficient evidence. *Farrell v. R.*, 189M573, 250NW454. See Dun. Dig. 10426.

Court will not disturb finding of commission upon question of fact reasonably supported by evidence. *Benson v. W.*, 189M622, 250NW673. See Dun. Dig. 10426.

A decision of the commission will not be disturbed if founded upon an inference reasonably to be drawn from the controlling facts. *Jensvoid v. K.*, 190M41, 250NW815. See Dun. Dig. 10426.

Findings of fact by industrial commission cannot be disturbed on appeal. *Anderson v. C.*, 190M125, 251NW3. See Dun. Dig. 10426.

Decision of the industrial commission supported by adequate evidence will not be disturbed. *Wallin v. G.*, 190M335, 251NW669. See Dun. Dig. 10426.

Finding that disability resulted from accidental injury cannot be disturbed by court if supported by evidence. *Rutz v. T.*, 191M227, 253NW665. See Dun. Dig. 10426.

Industrial Commission's finding of fact with reasonable support in evidence will not be disturbed. *Nelson v. W.*, 191M225, 253NW765. See Dun. Dig. 10426.

Findings of commission on controverted questions of fact must be sustained unless they are so manifestly contrary to evidence that reasonable minds could not adopt them. *Duchant v. O.*, 192M443, 256NW905. See Dun. Dig. 10426.

In action by employee to recover of employer part of money paid it by plaintiff, under arrangement whereby employer paid full wages and received compensation, finding of a referee of industrial commission that insurer had paid plaintiff full compensation prescribed by law presents no defense. *Ruehmann v. C.*, 192M596, 257NW501. See Dun. Dig. 10418.

Finding of commission as to which one of two persons was employer of injured employee cannot be disturbed where supported by evidence. *Hiland v. F.*, 193M10, 257NW663. See Dun. Dig. 10426.

Function of supreme court is not to make an independent finding as to relationship between parties, but to ascertain whether evidence supports finding made by commission. *Olson v. E.*, 194M458, 261NW3. See Dun. Dig. 10426.

Whether insanity disabling employer from engaging in any occupation was connected with and a result of injuries received in accident was a question of fact. *Newman v. V.*, 194M513, 261NW703. See Dun. Dig. 10426 (24).

In reviewing award of industrial commission, evidence must be taken in its most favorable aspect to respondent. *Lundeen v. K.*, 196M100, 264NW435. See Dun. Dig. 10426.

Jurisdiction of industrial commission to vacate a decision rendered pursuant to §4295 was adequately raised so as to be reviewed on certiorari. *Hawkinson v. M.*, 196M120, 264NW438. See Dun. Dig. 10426.

Supreme court does not try cases de novo or make findings of fact. *Rick v. N.*, 196M185, 264NW685. See Dun. Dig. 10426.

Supreme court cannot set aside a finding of industrial commission, if reasonable minds could, on the evidence, reach different conclusions. *Id.*

That attorneys for employee had issued draft on insurer for compensation and expenses of nursing created no estoppel and did not authorize supreme court to dismiss certiorari, insurer refusing to honor draft for compensation. *Id.*

Evidence was not properly before supreme court where it was certified by stenographic reporter rather than secretary and under seal of industrial commission. *Dahley v. E.*, 196M428, 265NW284. See Dun. Dig. 10426.

Finding of lack of causal connection between eye ulcer causing blindness and slight injury to eye at same point held palpably against greater weight of evidence requiring reversal of finding of commission. *Pachavar v. O.*, 196M558, 265NW429. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. *Reinhard v. U.*, 197M371, 267NW223. See Dun. Dig. 10426.

Whether testimony, objected to as conversation with a person since deceased, was improperly admitted, was immaterial, where only conclusion possible under all other evidence in case was that industrial commission properly denied compensation. *Anderson v. R.*, 196M358, 267NW501. See Dun. Dig. 10426.

A finding upon question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which commission arrived. *Johnson v. N.*, 197M616, 268NW1. See Dun. Dig. 10426.

On appeal in a compensation case, supreme court does not make findings of fact. *Id.*

Litigants cannot sleep on their rights until they reach supreme court, and then, for the first time, object to an irregularity occurring in tribunal below. *Foster v. S.*, 197M602, 268NW631. See Dun. Dig. 10426.

Where there is conflicting evidence or where diverse inferences may be drawn from evidence, conclusions reached by commission should not be disturbed. *Id.*

Unless there was clear abuse of discretion, order of commission denying rehearing for newly discovered evidence cannot be disturbed. *Pechavar v. O.*, 198M233, 269NW417. See Dun. Dig. 10421.

Supreme court does not disturb findings of fact unless evidence is clearly insufficient to sustain them. *Benson v. H.*, 198M250, 269NW460. See Dun. Dig. 10426.

Where there is a conflict in the evidence and inferences raised thereby, supreme court can pass only upon question of whether or not decision below is reasonably supported by record. *Chamberlain v. T.*, 198M274, 269NW525. See Dun. Dig. 10426.

Industrial commission is a fact-finding body even on appeal from order of its referee. *Segerstrom v. N.*, 198M298, 269NW641. See Dun. Dig. 10423.

Assignment of error that the finding that conclusions of the industrial commission of Minnesota are contrary to testimony herein was not in proper form, there being nine specific findings of fact. *Skoog v. S.*, 198M504, 270NW129. See Dun. Dig. 361.

Findings of fact of industrial commission are entitled to very great weight and will not be disturbed unless manifestly contrary to evidence. *Colosimo v. G.*, 199M600, 273NW632. See Dun. Dig. 10426.

Finding of fact of industrial commission will not be overturned unless against manifest preponderance of evidence. *Bronson v. N.*, 200M237, 273NW681. See Dun. Dig. 10426.

A finding upon a question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which commission arrived. *Gorman v. G.*, 200M122, 273NW694. See Dun. Dig. 10426.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. *Id.*

Opposed medical opinions as to causal relation between an accident and resulting condition of workman are as much matters of fact as any other. *Id.*

Decision of fact issue by industrial commission denying additional compensation sustained by evidence must be affirmed. *Astell v. C.*, 201M108, 275NW420. See Dun. Dig. 10426.

Section 9499 is not applicable to bonds required on certiorari issued to industrial commission, which are properly fixed and approved under §4320. *Nelson v. K.*, 201M123, 275NW624. See Dun. Dig. 324, 10426.

Findings of industrial commission must remain undisturbed if there is evidence reasonably tending to sustain them, or unless they are manifestly and clearly contrary to evidence. *Lothenbach v. A.*, 201M195, 275NW690. See Dun. Dig. 10426.

Industrial commission's finding on fact question cannot be disturbed unless evidence and inferences therefrom clearly require reasonable minds to adopt contrary conclusion. *Sutlief v. N.*, 201M127, 275NW692. See Dun. Dig. 10426.

Whether there is any evidence tending to support a given finding and whether evidence conclusively establishes a particular fact are deemed questions of law. *Id.*

Triers of fact must choose not only between conflicting evidence but also between opposed inferences. *Hill v. U.*, 201M569, 277NW9, See Dun. Dig. 10426.

A finding of commission as to extent of an employee's injuries, upon conflicting evidence in which it finds some support, will not be disturbed. *Kruchowski v. S.*, 201M557, 277NW15. See Dun. Dig. 10426.

Fact-finding body is commission and not court. *Krnetich v. O.*, 202M158, 277NW525. See Dun. Dig. 10426.

Findings of fact of commission will not be disturbed unless evidence clearly requires a contrary conclusion. *Henz v. A.*, 202M213, 277NW923. See Dun. Dig. 10426.

Finding that employee suffering a heat stroke sustained an accidental injury arising out of and in course of his employment was a finding of an ultimate fact, rather than a mere legal conclusion. *Ruud v. M.*, 202M480, 279NW224. See Dun. Dig. 10426.

If a relator deems a finding insufficient because not particularizing items upon which ultimate fact is based, remedy is by motion to commission for additional or modified findings. *Id.* See Dun. Dig. 10426.

Findings of fact of commission will not be disturbed unless evidence clearly requires a contrary conclusion. *Utgard v. H.*, 202M637, 279NW748. See Dun. Dig. 10426.

Where decision of industrial commission is supported by evidence, it will not be disturbed although commission could reasonably have arrived at a different conclusion. *Erickson v. G.*, 203M261, 280NW866. See Dun. Dig. 10426.

Whether bilateral sacroiliac arthritis or pain in back was caused by twisting of body to prevent a fall after stubbing toe while carrying a heavy timber was a question of fact for the commission. *Id.*

An order of commission refusing to dismiss an appeal taken by an employee from a decision of a referee denying compensation does not involve merits and is not reviewable by certiorari. *Vokich v. I.*, 203M433, 281NW713. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences, and it is only where inferences upon which challenged finding rests is not itself reasonably supported that there should be a reversal. *Kayser v. C.*, 203M578, 282NW801. See Dun. Dig. 10426.

A negative finding of industrial commission that employee did not suffer accidental injury to foot as testified by him held supported by evidence though uncontradicted. *Spies v. S.*, 284NW887. See Dun. Dig. 10426.

If after an impartial consideration of evidence and of inferences which may fairly and reasonably be drawn therefrom, reasonable minds might reach different conclusions upon the question, findings of commission must stand. *O'Reilly v. M.*, 285NW526. See Dun. Dig. 10426(24).

A finding upon a question of fact cannot be disturbed unless consideration of evidence and inferences permissible therefrom clearly require reasonable minds to adopt a conclusion contrary to one at which the commission arrived. *Westereng v. C.*, 285NW717. See Dun. Dig. 10426.

Fact that medical expert for employer is exceptionally qualified does not permit court to pass aside less experienced physician testifying for employee. *Id.* See Dun. Dig. 10426.

Where a party litigant failed to object to a rehearing because of a failure to show cause for its granting and partakes therein, he cannot for first time raise question in supreme court. *Baudek v. O.*, 285NW887. See Dun. Dig. 10426.

Findings of commission as to disability and its termination, as well as all other findings, are entitled to great weight and will not be disturbed unless manifestly contrary to evidence. *Id.* See Dun. Dig. 10426(24).

A decision for the affirmative of a fact issue cannot stand on conjecture, even that of expert witnesses. *Susnik v. O.*, 286NW249. See Dun. Dig. 10426.

4321. Supreme Court to have original jurisdiction.

Where an award of compensation has been affirmed by the Supreme Court and remanded, the Industrial Commission is without power to grant a new hearing. 174M153, 218NW550.

Motion or petition in supreme court to remand case to industrial commission for further hearing on ground of newly discovered evidence was denied where affidavits of various parties contained substantially same irreconcilable conflict of issues involved as appeared at trial. *Susnik v. O.*, 193M129, 258NW23. See Dun. Dig. 10426(12).

Supreme court may determine that relator on certiorari was not employee of respondent, where raised by respondents in brief and argument, though not raised by relator on certiorari. *Benson v. H.*, 198M250, 269NW460. See Dun. Dig. 10426.

Where there is no dispute as to character and kind of service performed or as to relation of alleged employee to corporation, it is duty of supreme court to declare what law governs as to whether relator is an employee. *Id.*

4324. Costs—Reimbursements to prevailing party—Attorney's fees, etc.

Award of attorney's fees by commission approved by supreme court. 180M388, 231NW193.

Statutory costs denied because of deliberate and extended reference in brief for respondents to facts, outside record, said to have occurred since hearing. *Whaling v. I.*, 194M302, 260NW299. See Dun. Dig. 2226.

4325. Definitions.

Where janitor performs services for several, and is injured in the service of one employer, he is entitled to compensation from such employer, based on his total regular earnings as a janitor. 171M402, 214NW265.

The term "employment" means the particular kind of employment in which the employee was engaged at the time of the accident. 171M402, 214NW265.

Employee might be employed under terms that would permit his reward to be in something more than money. 174M227, 218NW882.

Weekly wage to be paid during temporary total disability is to be ascertained by multiplying daily wage by five and one-half. *Modin v. C.*, 189M517, 250NW73. See Dun. Dig. 10410.

Where traveling salesman was being paid \$60 to \$65 weekly to cover flat allowance of \$25 as wages, hotel bills, meals, and a car mileage allowance, in absence of showing that allowance resulted in profit to him, finding that his wages were \$40 per week was sustained. *Nelson v. W.*, 191M225, 253NW765. See Dun. Dig. 10410.

Driver of school bus working about 3 hours a day was a part time worker for purposes of computing daily wage. *Lee v. V.*, 192M449, 257NW90. See Dun. Dig. 10410.

Burden is upon him who alleges it to show that normal working time is not 8 hours in determining compensation of part time worker. *Id.* See Dun. Dig. 10421.

4326. Definitions, continued.

(b) "Child" or "children" shall include posthumous children, all other children entitled by law to inherit as children of the deceased and the child or children of a person who shall have been adjudged to be his or their father by a court of competent jurisdiction in any state of the United States; also stepchildren who were members of the family of the deceased at the time of his injury and dependent upon him for support. (As amended Feb. 9, 1937, c. 18, §1.)

Sec. 2 of Act Feb. 9, 1937, cited, provides that the Act shall take effect from its passage.

(a).

134M25, 158NW717, should read 133M447, 158NW717.

(b).

An illegitimate child of a woman was a "stepchild" of man she subsequently married, entitled to compensation for his death. *Lunceford v. F.*, 185M31, 239NW673. See Dun. Dig. 10411.

(c). Husband or widower.

Where employee entered into an agreement to marry on a certain date and was killed several days before date set for marriage and after banns of marriage had been published by church, and 8½ months after death, girl bore a child of the employee, there was no marriage and child was not entitled to compensation. *Guptil v. E.*, 197M211, 266NW748. See Dun. Dig. 10411.

(d). Employer.

177M454, 225NW449.

Company furnishing instrumentality to another, together with trained employees to manage the same, remained employer of the men so furnished. 179M416, 229NW561.

Independent rural telephone company organized on June 25, 1913, held a de facto corporation and dependents of employee held entitled to compensation. *Ebeling v. I.*, 187M604, 246NW373. See Dun. Dig. 10393.

If employee is given over unreservedly to the service and direction of another employer it creates relation of master and servant as between such employee and such other employer; but such new relation cannot be thrust upon servant without his knowledge and consent. *Dahl v. W.*, 194M35, 259NW399. See Dun. Dig. 10395.

Evidence held to show that two persons operating an apartment building and dividing income were partners rather than tenants in common. *Keegan v. K.*, 194M261, 260NW318. See Dun. Dig. 10395.

Whether one painting cornices of a building for a lump sum, employer furnishing materials and painter tools, was an employee or an independent contractor, held question of fact for industrial commission. *Rick v. N.*, 196M185, 264NW685. See Dun. Dig. 10395.

A substitution of employers cannot be made without knowledge or consent of employee. *Yoselowitz v. P.*, 201M600, 277NW221. See Dun. Dig. 10395.

Relation of employer and employee may be terminated at any time by agreement of parties, and if employee has notice or knowledge of substitution of a new employer and thereafter continues his employment, he will be deemed to have accepted new employer and to have terminated relations which existed with old one. *Id.* See Dun. Dig. 10395.

Where one was employed to maintain township roads at an hourly rate, and was given an increased rate when directed to use machine for removal of snow because of need for an assistant, road maintainer and not township was employer of the assistant. *Mooney v. T.*, 203M461, 281NW820. See Dun. Dig. 10395.

County employing an independent contractor held not an employer. *Op. Atty. Gen.* (844c-3), June 11, 1934.

City is liable for compensation to members of fire department while on calls outside village limits under direction of village officers, whether or not there exists a contract with adjacent territory. *Op. Atty. Gen.* (688p), Aug. 29, 1934.

As affecting right of county to carry workmen's compensation insurance, it would seem that operators of highway machine rented by county on hourly basis, rental being paid to the owner of the equipment, are not employees of the county. *Op. Atty. Gen.* (125a-61), Mar. 17, 1937.

Employees in Mineral Springs Sanatorium are entitled to benefits of act, and county may provide for compensation insurance. *Op. Atty. Gen.* (523g-8), Apr. 1, 1937.

Employees of county sanatoriums and joint county sanatoriums are entitled to benefits of act. *Op. Atty. Gen.* (556a), Feb. 14, 1939.

Conflict of laws, 20MinnLawRev19.

(g). Employee.

President of company who owned all excepting two "qualifying shares" was not an "employee." 176M422, 223NW772.

Employee of one who received a stated sum per car for loading stock and seeing to its transportation for a shipping association was not an employee of the shipping association. 177M462, 225NW448.

President of corporation held not an employee entitled to compensation for injuries. 179M304, 229NW101.

Finding that employee working in creamery was employee of creamery and not of manager and butter maker who paid her. *Janosek v. F.*, 182M507, 234NW870. See Dun. Dig. 10395.

Evidence held to sustain finding that owner of truck who hauled timber at an agreed price per cord was an employee. *Barker v. B.*, 184M366, 238NW692. See Dun. Dig. 10394.

Finding that teamster was employee of road contractor while driving an automobile to order feed and groceries held sustained by evidence. *Wheeler v. W.*, 184M538, 239NW253. See Dun. Dig. 10393-10395.

Arrangement whereby charitable organization operating a hotel gives persons who do work several dollars a week for pocket money and incidentals held not contract of hiring. *Hanson v. S.*, 191M315, 254NW4. See Dun. Dig. 10395.

Husband of one member of a partnership operating an apartment building held an employee of partnership. Keegan v. K., 194M261, 260NW318. See Dun. Dig. 10395.

No one may become employee of another without such other's consent, expressed or implied, relationship being purely contractual. Jackson v. C., 201M526, 277NW22. See Dun. Dig. 10395.

(g) (1) Public employees.

Driver of street flusher held employee of contractor and not of the city. 179M277, 228NW935.

Compensation law covers a municipal employee only when under the same circumstances the employee of a non-municipal employer would be covered. 181M601, 233NW467. See Dun. Dig. 10394(48).

One paid by the job to wash windows of a school building under construction and nearing completion held an employee and not an independent contractor. Wass v. B., 185M70, 240NW464. See Dun. Dig. 10395.

Constable who assists sheriff at his request in making an arrest, is employee of municipality, though neither he nor the sheriff had his official position in mind at time. McFarland v. V., 187M434, 245NW630. See Dun. Dig. 10394(48).

Where in application for federal funds city agreed to assume liability for and to provide workmen's compensation for all persons employed upon project for which funds were used, city assumed same responsibility toward persons working on such project that it did to its regular employees. Michels v. C., 193M215, 258NW162. See Dun. Dig. 10394.

A deputy county auditor, while a county official, is not elected or appointed for a regular term so as to be denied benefit of workmen's compensation law. Whaling v. I., 194M302, 260NW299. See Dun. Dig. 10394(54).

One otherwise an employee of a township is not deprived of right to compensation because, at time of injury, he happened to be working out relief theretofore furnished him by government agencies. Cristello v. T., 195M264, 262NW632. See Dun. Dig. 10394.

Evidence held to sustain finding that truck driver hauling gravel for township road was employee of township and not of truck owner as independent contractor, though truck owner paid employee. Dahnert v. O., 196M478, 265NW291. See Dun. Dig. 10395.

Township paying village a certain amount per run made by fire department was not an "employer" of the individual firemen; but was "employer" where it paid volunteer village firemen direct. Op. Atty. Gen., Feb. 1, 1929.

Where sheriff calls upon city police to aid him in conducting raids and searching premises, and they are injured, the county would be liable under the Workmen's Compensation Act. Op. Atty. Gen., Nov. 10, 1931.

Persons employed by county in so-called "made work" are employees within compensation act. Op. Atty. Gen., Mar. 8, 1933.

County is not liable for injuries received by prisoner in county jail while working. Op. Atty. Gen., Mar. 13, 1933.

Volunteer firemen are entitled to benefits of workmen's compensation law. Op. Atty. Gen., Mar. 17, 1933.

Persons employed in so-called "made work" or "relief work" are employees of state or municipality and protected by act. Op. Atty. Gen., July 24, 1933.

Neither state, county, village, borough, town, city nor school district may elect not to be bound by part 2 of compensation act. Op. Atty. Gen., Oct. 16, 1933.

Minnesota Historical Society is liable under Workmen's Compensation Act for injuries to its employees but is not liable to visitors injured while on the premises. Op. Atty. Gen. (523g-17), May 2, 1934.

An employee of a municipality or other subdivision of the state may elect not to be bound in a written contract of employment to that effect or by giving statutory notice, but if municipality requires such election by employee, it might constitute duress. Op. Atty. Gen. (523g-18), May 31, 1934.

Substitute relief worker taking place of another member of same family was entitled to compensation for injuries sustained when employed as relief worker. Op. Atty. Gen. (400E), Sept. 27, 1934.

Chief of police of city of Detroit Lakes is an employee under compensation law, but whether street commissioner of that city is an employee depends on whether or not he is an official or mere employee. Op. Atty. Gen. (359a-23), Dec. 17, 1934.

Whether persons employed to maintain streets and railroads in the village are employees or independent contractors is a question of fact. Op. Atty. Gen. (523a-5), July 19, 1935.

Ordinarily persons employed on relief projects are not employees of county within meaning of compensation law or workmen's compensation insurance policy. Op. Atty. Gen. (523g-18), Mar. 15, 1935.

If members of city fire department have gone outside of corporate limits of city, pursuant to direction of city authority, or with consent of such authority, they are entitled to benefits of compensation act. Op. Atty. Gen. (688h), Sept. 21, 1935.

Weight of authority is to effect that relief employees are not public employees. Op. Atty. Gen. (523g-18), Nov. 19, 1935.

Whether persons working on relief are employees is question of fact, but where county binds itself in contract with state in connection with obtaining funds to carry

insurance on relief workers, there is an agreement which is not ultra vires of which such employees may take advantage. Op. Atty. Gen. (523g-18), Mar. 21, 1936.

Employees of state relief agency created for temporary purposes are employees of a department of state entitled to benefits of workmen's compensation act payable out of state compensation revolving fund. Op. Atty. Gen. (523g-19), Apr. 1, 1936.

Employees of municipalities working on project as a result of agreement between rural habilitation corporation and municipality, working out seed loan notes, are entitled to benefits of compensation act. Op. Atty. Gen. (523a-25), Oct. 1, 1936.

As affecting right of county to carry workmen's compensation insurance, it would seem that operators of highway machine rented by county on hourly basis, rental being paid to the owner of the equipment, are not employees of the county. Op. Atty. Gen. (125a-61), Mar. 17, 1937.

Employees in Mineral Springs Sanatorium are entitled to benefits of act, and county may provide for compensation insurance. Op. Atty. Gen. (523g-8), Apr. 1, 1937.

County employees using sprayers in weed eradication under contract between state and county were not "state employees". Op. Atty. Gen. (322b), Mar. 22, 1938.

Employees of county sanatoriums and joint county sanatoriums are entitled to benefits of act. Op. Atty. Gen. (556a), Feb. 14, 1939.

Operator of a weed spraying machine operating under an arrangement with in association of township officers, charging each customer a certain amount for his time and cost of chemicals, held an independent contractor. Op. Atty. Gen. (523e-2), June 28, 1939.

Application of state workmen's compensation laws to public employees and officers. 17MinnLawRev162.

Right to compensation of indigent working for municipality under scrip relief plan. 18MinnLawRev231.

(g). (2). Private employees.

No contract of employment of employee of an electric company with glass company arose from request for assistance in lifting glass from truck, though an employee of glass company told another employee of electric company that persons assisting would be paid. Pittsburgh Plate Glass Co. v. C., (CCA8), 98P(2d)533.

Finding that window washer was employee, sustained. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

The fact that decedent, in doing work as a window washer, competed with other persons and companies who were engaged in the same line of work did not make him an independent contractor. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

Where work is simple manual labor on premises of the employer, and there is no showing that right to control was surrendered or contracted away, question of whether relation of employer and employee exists is ordinarily a question of fact. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

Right to control and supervise work is one of important tests as to whether worker is employee or independent contractor. Carter v. W., 186M413, 243NW436. See Dun. Dig. 10395.

Evidence sustained finding that interior decorator was not an independent contractor. Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10395.

Under evidence that a foreign corporation sent a representative into state and employed a resident of state to sell clothing throughout state on a commission basis, finding of referee that there was a Minnesota contract of hire must be sustained. Kling v. P., 194M179, 259NW 809. See Dun. Dig. 10387.

Evidence held to sustain finding of relation of employee and employer between one driving his own truck on a well-defined route or territory, and receiving as compensation only a discount of 3c per pound, though salesman was at time required to pay for his sausage in advance. Olson v. E., 194M458, 261NW3. See Dun. Dig. 10395.

Authoritative control by employer over employee is necessary to establish relationship. Id.

Member of religious order teaching at a parochial school was an employee of the school, though all of her earnings were turned over to the order, which guaranteed her maintenance for life. Sister Odella v. C., 195M 357, 263NW111. See Dun. Dig. 10395.

Fact that employee hires others to assist or furnishes his own tools is not decisive of question whether he is employee or independent contractor. Rick v. N., 196M 185, 264NW685. See Dun. Dig. 10395.

Whether one painting corners of a building for a lump sum, employer furnishing materials and painter tools, was an employee or an independent contractor, held question of fact for industrial commission. Id.

Treasurer, vice president, member of the executive committee, and director of corporation, receiving a salary only as an officer was not employee. Benson v. H., 198 M250, 269NW460. See Dun. Dig. 10394.

One employed by husband of owner of building to make repairs so that part of building could be used by husband as a beer tavern, and part as a dwelling for husband and wife, held an employee of wife as well as husband. Colosimo v. G., 199M600, 273NW632. See Dun. Dig. 10395.

Cannassers selling corsets held shown to be employees of both manager and his wife at office in building where orders were delivered, though corsets were made by

manufacturer in another state. *Whalen v. B.*, 200M171, 273NW678. See Dun. Dig. 10395.

Evidence held not to justify invocation of doctrine of estoppel on question of relationship of president to his corporation, though insurance premium was based on pay roll. *Hansen v. T.*, 201M216, 275NW611. See Dun. Dig. 10395.

One employed by janitor of building at his own expense to assist in putting up screens was not an employee of owners of building, though it was contemplated that janitor might from time to time require assistance. *Jackson v. C.*, 201M526, 277NW32. See Dun. Dig. 10395.

President and director of corporation held an employee thereof. *State v. Rowe*, 280M172, 280NW646. See Dun. Dig. 10395.

Evidence tending to show that relator arranged for and undertook a job of hauling to be performed by his son with relator's truck, looked after performance of work and negotiated for a new price for its performance after son quit and that party for whom hauling was done settled for same and paid relator balance due under contract after son's death, sustains a finding that the son was employed by relator. *Laughren v. L.*, 285NW531. See Dun. Dig. 10395.

—Independent contractors.

Advertising aviator held employee and not independent contractor. 173M414, 217NW491.

Person cutting, piling and loading on a car held an employee and not an independent contractor. *Reigel v. J., B. F.*, 182M289, 234NW452. See Dun. Dig. 5835, 10395.

Copartnership doing work for school district held independent contractor and not employee. 175M547, 221NW 911.

An agent receiving commissions as compensation, was an employee and not an independent contractor. 176M 373, 223NW608.

Person working on house held independent contractor. *Holmberg v. A.*, 177M55, 224NW458, *Kittson's Estate*, 225NW439.

Applicant for compensation must show that he was employee and not an independent contractor. *Holmberg v. A.*, 177M55, 224NW458, 225NW439.

Finding that one employed to cut timber on a piece-work basis, was employee and not independent contractor, sustained. 178M133, 226NW475.

Painter and decorator repairing store for tenants of building at a compensation of 50 cents an hour, held an employee and not an independent contractor. 179M395, 229NW340.

Person cutting, piling and loading on a car held an employee and not an independent contractor. *Reigel v. F.*, 182M289, 234NW452. See Dun. Dig. 5835, 10395.

One caring for sheep held an employee and not an independent contractor, and that there was no relationship of bailee and bailor. *Wilson v. T.*, 188M97, 246NW542. See Dun. Dig. 10395.

Finding that one cleaning and painting smokestack for specified amount was employee, sustained. *Fuller v. N.*, 189M134, 248NW756. See Dun. Dig. 10395(65).

Finding that blacksmith doing jobs on hourly basis was employee, held sustained by evidence. *Myers v. V.*, 189M244, 248NW824. See Dun. Dig. 10394.

Owner of truck engaged in hauling bottled products at fixed hourly compensation was an employee and not an independent contractor. *Anderson v. C.*, 190M125, 251 NW3. See Dun. Dig. 10395.

One hauling ashes from laundry held not employee of laundry and not protected by compensation act. *Cleland v. A.*, 190M593, 252NW453. See Dun. Dig. 10395.

A mason agreeing to build a wall for a certain sum, including material, was an independent contractor and not an employee. *Lange v. A.*, 194M342, 260NW298. See Dun. Dig. 10395.

Road contractor held employer of truck drivers selected through federal reemployment service to drive trucks leased through such employment service on a yardage and mileage basis, and owner of trucks was not employer though it supervised use of trucks. *Grundeman v. H.*, 195M21, 261NW478. See Dun. Dig. 10395.

Burning of brush for a highway contractor was not mental labor which could not be subject of an independent contract. *Becker v. N.*, 200M272, 274NW180. See Dun. Dig. 5835.

Exclusion of evidence of a collateral hauling job performed about two years prior to one in issue held not to be error within rule that admissibility of evidence is not so much a question of law as of sound, practical judgment to be determined with reference to facts of particular case, issue being whether deceased was an employee or an independent contractor. *Laughren v. L.*, 285NW531. See Dun. Dig. 10395.

—Casual employment.

See notes under §4263.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." *Billmeyer v. S.*, 177M465, 225NW426.

(h) Accidental injuries.

Word "accident" is used with a restricted meaning, and negligence is not necessarily excluded. *Globe Indemnity Co. v. B.*, (USCCA8), 90F(2d)774.

Injury to city employee, while driving his horses to work in the morning, hitched to a dump cart owned by the city, did not arise out of and in the course of his employment. 177M197, 224NW840.

Injury while traveling on highway arose out of and in course of employment. 177M503, 225NW428.

Finding that hernia did not result from a strain in lifting a sack of peanuts, sustained. 178M616, 226NW203.

Finding that loss of eyesight was occasioned by a twig hitting employee in eye while chopping, sustained. 178M 133, 226NW475.

Evidence held to sustain finding that condition of employee resulted from injury under former employer. 178 M279, 226NW767.

Finding that transportation to work was regularly furnished sustained. 178M310, 227NW48.

Finding that teamster hauling bundles for commercial thresherman, but injured while pumping water for the horses on employer's farm, was injured in the course of employment of commercial thresherman, sustained. 178 M519, 227NW663.

Whether act of employee in attempting to prevent explosion of bomb was for purpose of preventing destruction of employer's property, held a question of fact for the Industrial Commission. 179M272, 228NW931.

Injury to miner held not to have resulted from accident in course of employment. 179M291, 229NW100.

Death by lightning is not compensable unless the employment accentuates the natural hazard from lightning. 179M321, 229NW138.

Finding of commission that hernia did not arise out of accident in course of employment, held contrary to the evidence. 180M353, 230NW813.

Compensation may be given for traumatic neurosis producing disability resulting from injury in course of employment. 180M411, 230NW897.

Finding of commission that carpenter sent 135 miles to work on school building was not in course of employment when injured while returning in his own automobile over week end sustained. 180M473, 231NW188.

Miner who was directed to work elsewhere on account of a threatened cave-in, but who, in disobedience of orders, returned to such dangerous place and was there killed, held not in the course of his employment, and compensation could not be allowed for his death. 180M 400, 231NW214.

Finding that police officer, injured while traveling on a motorcycle to assume duty at place he was detailed by superior officer, received such injuries accidentally arising out of and in the course of employment, held sustained by evidence. 181M601, 233NW467. See Dun. Dig. 10404.

Evidence held to sustain finding that deceased was struck by an automobile crank in the course of his employment, and that this caused acute appendicitis, from which death ensued. 183M270, 236NW311. See Dun. Dig. 10404.

An injury sustained by an employee who slips on the street as he returns in the course of his employment to his employer's place of business at the close of the day is a street accident arising out of his employment. 183M 309, 236NW466. See Dun. Dig. 10396, 10403.

Death of employee with unknown coronary sclerosis who suffered an initial attack of angina pectoris while under an emotional and mental strain and while engaged in severe muscular employment was compensable. *Wicks v. N.*, 184M540, 239NW614. See Dun. Dig. 10396.

Time for giving notice commences from occurrence of disability and not time of accident resulting in latent injury. *Clausen v. M.*, 186M80, 242NW397. See Dun. Dig. 10420.

Evidence sustains finding that employee suffered injury in automobile accident which resulted in his death. *Brameld v. A.*, 186M89, 242NW465. See Dun. Dig. 10406.

Finding that street sweeper falling and developing hernia suffered no accidental injury in course of employment, held not contrary to evidence. *Taddi v. V.*, 186M 218, 242NW717. See Dun. Dig. 10406.

Evidence sustains finding that employee received heat stroke and that it caused his death. *Pearson v. F.*, 186M 155, 242NW721. See Dun. Dig. 10406.

Finding that heat stroke was accidental is sustained. *Pearson v. F.*, 186M155, 242NW721.

Employee suffering rupture of blood vessel in brain, while lifting heavy weight, held to have suffered accidental injury. *Krenz v. K.*, 186M312, 243NW108. See Dun. Dig. 10396.

Evidence sufficiently supports finding that permanent loss of mental faculties was not result of accidental injury. *Johnson v. P.*, 187M447, 245NW617. See Dun. Dig. 10406.

Award of compensation for heat stroke, held justified. *McDonald v. F.*, 187M442, 245NW635. See Dun. Dig. 10404.

Test as to whether heat stroke is accidental injury warranting compensation is whether employment was such as to expose employee to risk of sun's rays. *McDonald v. F.*, 187M442, 245NW635. See Dun. Dig. 10396.

Finding of commission that cancerous condition was not caused or aggravated by injury, held supported by evidence. *Palumbo v. C.*, 187M508, 246NW36. See Dun. Dig. 10406.

Evidence held to sustain finding that heatstroke to hand-truck man causing his death was accidental and arose out of employment. *Mudrock v. W.*, 187M518, 246NW113. See Dun. Dig. 10396, 10406.

Finding that exophthalmic goiter was not caused or aggravated by explosion, sustained. *Cooper v. M.*, 188M 560, 247NW805. See Dun. Dig. 10406.

Evidence held to sustain finding that erysipelas resulting in death was caused by infection when employee bumped leg on table. *Bliss v. S.*, 189M210, 248NW754. See Dun. Dig. 10404.

Finding that bump on head did not cause injury to eye, sustained. *Ekelund v. W.*, 189M228, 248NW824. See Dun. Dig. 10405.

Store employee injured when bug flew into eye, held not to have sustained burden of proof that injury resulted from accident arising out of employment. *Bloomquist v. J.*, 189M285, 249NW44. See Dun. Dig. 10405.

Death caused by pulmonary embolism following coronary thrombosis resulting from exertions, held "accidental injury" and compensable. *Farrell v. R.*, 189M573, 250NW454. See Dun. Dig. 10397.

Whether tumor and jamming of brain tissue into opening at bottom of skull was result of jar actor received when he landed on floor instead of mattress, held question of fact for industrial commission. *Heise v. B.*, 191M417, 254NW462. See Dun. Dig. 10426.

Whether bronchial asthma suffered by employee in grain elevator due to fumes arising from treated grain constituted accidental personal injuries, held question of fact. *Clark v. B.*, 195M44, 261NW596. See Dun. Dig. 10396.

Whether insanity disabling employee from engaging in any occupation was connected with and a result of injuries received in accident was a question of fact. *Newman v. V.*, 194M513, 261NW703. See Dun. Dig. 10403.

Sudden death from arteriosclerosis with thrombosis held not compensable, such a death coming in course of an employee's usual work, without extraneous cause, even overexertion not being accidental. *Stanton v. M.*, 195M457, 263NW433. See Dun. Dig. 10396.

Sudden death from stoppage of heart action resulting from hypertrophy incidental to high blood pressure, coupled with arteriosclerosis was not compensable, not being accidental. *McCarty v. C.*, 196M391, 265NW42. See Dun. Dig. 10396.

Evidence held to sustain finding that permanent partial disability of thumb was result of accident for which claim was filed. *Pease v. M.*, 196M552, 265NW427. See Dun. Dig. 10406.

Finding of lack of causal connection between eye ulcer causing blindness and slight injury to eye at same point held palpably against greater weight of evidence requiring reversal of finding of commission. *Pechavar v. O.*, 196M558, 265NW429. See Dun. Dig. 10406.

Disability resulting from infection is compensable if infection was introduced through portal made by injury in course of treatment, though not introduced at same time as injury. *Id.*

Evidence held to sustain finding that husband's death was due to a fall suffered in course of his employment, lighting up tuberculosis of spine. *Reynolds v. C.*, 199M25, 270NW912. See Dun. Dig. 10404.

Proof required to sustain relation of cause and effect between an accidental injury and subsequent death of injured person must be such as to take case out of realm of conjecture, but if evidence furnishes a reasonable basis for an inference that injury is cause of death, that is sufficient. *Jacobs v. V.*, 199M572, 273NW245. See Dun. Dig. 10405.

Although employee is afflicted with a disease which would eventually result in his death, dependents are not barred from right to compensation if he actually suffered an accident which arose out of and in course of his employment, and if such accident intensified or aggravated his condition or affliction so as to be a contributing cause of his death, even though accident would not have caused or hastened death of a normal person. *Id.*

Evidence held to warrant finding that bump on leg caused death of an employee suffering from diabetes. *Id.* See Dun. Dig. 10406.

Evidence held to sustain finding that encephalitis did not result from injury to nose. *Gorman v. G.*, 200M122, 273NW694. See Dun. Dig. 10406.

Evidence held not to warrant disturbance of a finding that infectious condition and death was not caused or aggravated by an accidental injury consisting in accidentally scratching head of pimple. *Lothenbach v. A.*, 201M195, 275NW690. See Dun. Dig. 10396.

Dependent had burden of proving that death was caused by accident arising out of and in course of employment, and if evidence adduced indicated self-destruction on part of employee, presumption against suicide disappeared. *Sentieri v. O.*, 201M293, 276NW210. See Dun. Dig. 10406.

Sunstroke was accidental though onset was slow and gradual. *Ueltschl v. C.*, 201M302, 276NW220. See Dun. Dig. 10396.

Evidence held to sustain decision that a tubercular infection which developed in knee and subsequent death from pulmonary tuberculosis were due to an injury to leg. *Nyberg v. L.*, 202M86, 277NW536. See Dun. Dig. 10403.

Evidence sustains finding that heat stroke suffered by motorman was an accidental injury arising out of and in course of employment. *Ruud v. M.*, 202M480, 279NW224. See Dun. Dig. 10404.

Evidence held to sustain finding that employee did not suffer accidental injuries on date specified. *Utgard v. H.*, 202M637, 279NW748. See Dun. Dig. 10406.

Evidence held to sustain finding that multiple neuritis was not caused by injury to ankle. *Id.* See Dun. Dig. 10406.

A heatstroke was properly held an "accident", agency of causation having been set in motion during course and because of deceased's employment, there being no independent intervening cause unrelated to his employment, though collapse did not occur until next day after employment was ended. *La Crosse v. C.*, 203M146, 280NW285. See Dun. Dig. 10406.

Whether bilateral sacroiliac arthritis or pain in back was caused by twisting of body to prevent a fall after stubbing toe while carrying a heavy timber was a question of fact for the commission. *Erickson v. G.*, 203M261, 280NW866. See Dun. Dig. 10406.

Evidence held to sustain finding that employee had recovered from injuries from kick by horse and that hypertrophic arthritis was not result of accident. *McGrath v. B.*, 203M326, 281NW73. See Dun. Dig. 10406.

Where cause of total disability from coronary thrombosis must be determined by inference, and that cause may be inferred with equal probability to have arisen from other factors as well as from employment, commission correctly decided that employee had not proved disability caused by an injury arising out of his employment. *Addington v. S.*, 203M281, 281NW269. See Dun. Dig. 10406.

Burden of proof is upon employee to establish the accident. *Spies v. S.*, 284NW887. See Dun. Dig. 10406.

A negative finding of industrial commission that employee did not suffer accidental injury to foot as testified by him held supported by evidence though contradicted. *Id.* See Dun. Dig. 10406.

Evidence held to sustain finding that death from a brain hemorrhage was traceable to accident wherein employee received an injury to his head. *O'Reilly v. M.*, 285NW526. See Dun. Dig. 10396.

An actual aggravation of an existing infirmity is compensable even though accident would have caused no injury to a normal person. *Westereng v. C.*, 285NW717. See Dun. Dig. 10397.

Evidence held to sustain finding that disabled condition of employee after certain date was due to arthritis, sciatic neuritis and heart disease and that none of these conditions was caused or aggravated by injury sustained. *Baudek v. O.*, 285NW887. See Dun. Dig. 10406.

Evidence held sufficient to sustain inference that accident was contributing cause of death nearly four years later. *Susnik v. O.*, 286NW249. See Dun. Dig. 10406.

Occupational diseases. 22MinnLawRev77.

(j). Injuries out of and in course of employment.

Correction—Following line 8 of the last note in the first column on page 971 of the main edition should be inserted "cludes an injury which cannot fairly be traced to the em-"

See also notes under §4261.

172M439, 215NW678.

Evidence held to show hernia result of strain and compensable. 171M254, 214NW29.

Finding that hernia did not result from alleged injury held sustained by the evidence. 171M302, 213NW897.

Death from abscess of brain held not occasioned by injury occurring 20 months prior thereto. 171M382, 214NW67.

Burden of proof is on plaintiff to show that accident arose out of and in the course of the employment. 172M185, 214NW775.

Predisposition of a bone to fracture does not prevent compensation when it does occur from an accidental fall, even though such a fall would not have fractured a bone of ordinary strength. 172M94, 214NW923.

Finding that fatal shooting of employee by a fellow employee was for reasons personal to the victim, and not because he was an employee, sustained. 172M178, 215NW204.

Finding that death did not arise out of and in the course of the employment sustained. 172M185, 214NW775.

Finding that death did not result from accident arising out of and in the course of employment sustained. 172M185, 214NW775.

Burden is on plaintiff to show that accident arose out of and in course of employment. 172M185, 214NW775.

Sunstroke may constitute an "accident" and apoplexy due in part to an increased blood pressure caused from heavy lifting is an "accident". 172M489, 216NW241.

Finding that infection causing death did not result from injury received in course of employment held sustained by evidence. 172M549, 216NW240.

The circumstances attending an automobile trip undertaken after ten o'clock at night held to justify a holding that the employee was not in the course of his employment. 172M551, 216NW239.

Employee is not deprived of compensation because service in which he was engaged at time of injury was beyond the usual scope of his employment. 173M441, 217NW370.

Finding that injury arose out of and in course of employment as salesman sustained by evidence. 173M481, 217NW680.

Contracting pneumonia by city fireman held not "accident". 173M564, 218NW126.

Constable's death from accidentally discharging revolver did not arise out of employment by owner of amusement park employing him. 174M50, 218NW170.

Death hastened by and due to an aggravation of an existing infirmity by the use of a general anesthetic in performing an operation made necessary by an accident, is compensable. 174M94, 218NW243.

Where employee suffered chemical poisoning and commission finds there was "accidental injury", Supreme Court will assume that there was injury to the physical structure of the body at the time of the injury. 174M147, 218NW555.

Chemical poisoning held an injury arising out of and in the course of the employment. 174M147, 218NW555.

Where one employed to unload car on piece work basis, after quitting for the evening went into foundry and without being asked to do so assisted in lifting a heavy object and was injured, held that the injury arose out of the employment. 174M156, 218NW545.

That the deceased was affected with heart disease predisposing him to an injury does not prevent compensation. 174M359, 219NW292.

Evidence held not to require finding that fall was a contributing cause of death three months later from decomposition of the heart. 174M359, 219NW292.

Finding that injury to automobile salesman in accident happening while driving a prospective purchaser on an errand for the prospective purchaser did not arise out of nor in the course of his employment held sustained by the evidence. 174M362, 219NW293.

Evidence. 174M420, 219NW556.
Injury to cook near rear door of restaurant on premises of employer while on way to work was compensable. 174M491, 219NW869.

Finding that death from heart trouble resulted from blow or pressure over heart, held sustained by evidence at variance with expressed medical views. 175M42, 219NW944.

The law supposes accident as against suicide until the contrary is shown. 175M489, 221NW913.

An employee who went to a garage for the purpose of starting out on a collection trip and who was asphyxiated by gas while changing a tire, died by accident which arose out of and in the course of his employment. 175M489, 221NW913.

Finding that hernia was not caused or aggravated by accident sustained. 175M553, 221NW905.

Attorney's office assistant, held to have received injury through accident when she sprained or twisted her wrist in quickly raising her left hand from the table to the keyboard of a typewriter, producing such intense pain that she could not operate the typewriter for three weeks. Koppe v. H. & T., 176M508, 223NW787.

Condition of leg held result of accident and not arthritis. Cunnien v. W., 177M39, 224NW244.

A traumatic hernia is compensable. Klika v. Independent School Dist. No. 79, 161M461, 202NW30 followed. 177M98, 244NW459.

In relation to the injury, it is sufficient if the accident is the incitation. 177M98, 224NW459.

Findings that paralytic condition resulted from cerebral hemorrhage while acting as member of volunteer fire department, sustained. 177M376, 225NW284.

Finding that cancer of the stomach was not the result of accidental injuries, sustained. 177M519, 225NW652.

Finding of causal connection between injury from blow on head and subsequent death from pneumonia sustained. Olson v. C., 178M34, 225NW921.

Finding that death resulted from encephalitis and not sunstroke, sustained. Hedquist v. P., 178M524, 227NW856.

Evidence held to show that injuries from inhalation or injection of poisonous substances in the distillation of coal was an "accident". 180M192, 230NW486.

Meaning of phrase "out of and in course of" employment. 180M400, 231NW214.

Evidence held to support finding that sarcoma resulted from striking of leg by falling box. 180M477, 231NW195.

Employer who wilfully assaults his employee cannot assert that the latter's remedy is under the compensation act. Boek v. W., 180M470, 231NW233(2).

Where it was necessary for an employee to cross railroad track to go from one part of his employer's premises to another he was entitled to compensation for injuries by being struck by a train. 181M90, 231NW803.

Evidence held to show that death of employee from tetanus was due to an accident in the course of employment, though the death could not be traced to any particular one of several wounds. 181M359, 232NW621. See Dun. Dig. 10406.

Evidence held to sustain finding of accidental death where insured while pushing a heavy truck, slipped and burst an artery in the brain. Clay v. N., 183M275, 236NW305. See Dun. Dig. 10406(88).

Burden was on insurer claiming that bursting of artery in brain was not accidental to show that arteries were diseased. Clay v. N., 183M275, 236NW305. See Dun. Dig. 10406(85).

Evidence held to justify finding that city salesman sustained an accidental fall causing injury from which he died. Johnston v. N., 183M309, 236NW466. See Dun. Dig. 10396.

Though interior decorating for an insurance company was casual work, still it was "in the usual course of the trade, business, profession, or occupation of the employer." Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10404.

Injuries to one driving his car to work held not to arise out of employment, though such car was occasionally used to make deliveries for employer. Lorenz v. W., 187M444, 245NW615. See Dun. Dig. 10405.

Death of employee when foreman turned air hose on him as a practical joke arose out of and in course of employment. Barden v. A., 187M600, 246NW254. See Dun. Dig. 10404.

Injury to salesman going outside his territory on fishing trip did not arise out of his employment, though he posted signs and advertising matter for employer while on trip. Loucks v. R., 188M182, 246NW893. See Dun. Dig. 10405.

Employer is liable for injuries sustained by an employee while performing work assigned to him, although performed for a third party. Melhus v. S., 188M304, 247NW2. See Dun. Dig. 10405.

Evidence as to murder of night watchman in vacant 10 story building held to rest in conjecture and speculation and to be insufficient to support finding that death arose out of employment. Sivald v. F., 188M483, 247NW687. See Dun. Dig. 10405.

This section excludes results caused by act of third person intended to injure employee because of reasons personal to him. Id. See Dun. Dig. 10402(86).

Death of employee by asphyxiation while preparing his car to use upon employer's business occurred in course of his employment. Grina v. S., 189M149, 248NW732. See Dun. Dig. 10404.

Property man in circus was "employee" of fraternal organization operating circus for one week, but his employment was "casual" and not in usual course of business. Houser v. O., 189M339, 248NW827. See Dun. Dig. 10394(50).

Burden is upon employee to prove that injury resulted from accident arising out of employment. Bloomquist v. J., 189M285, 249NW44.

Evidence held to sustain finding that condition of eye was result of original injury suffered in course of employment. Lawrence v. B., 189M522, 250NW75. See Dun. Dig. 10406.

Finding that county highway maintenance man kicked by his horse while on his farm at a distance from highway when he drove home for lunch was injured in an accident arising out and in course of his employment, held sustained by evidence. Green v. C., 189M627, 250NW679. See Dun. Dig. 10404.

Injury to chauffeur, working under orders of officer of corporation and also as personal chauffeur for officer and wife, suffered while furniture was being hauled to cottage of officer, held caused by accident arising out of employment, though he was permitting another experienced chauffeur to drive at time of collision with bridge, occasioned by being sun-blinded. Byam v. I., 190M132, 250NW812. See Dun. Dig. 10404.

Finding that salesman receiving injury at home while repairing employer's car was not injured in accident arising out of employment, held sustained by evidence. Jensvold v. K., 190M41, 250NW815. See Dun. Dig. 10405.

Evidence held to sustain finding that death to one holding bottled goods resulted from cut on finger and infection. Anderson v. C., 190M125, 251NW3. See Dun. Dig. 10404.

Death of employee in automobile of another employee at railroad crossing while on way to work, held not compensable. Kelley v. N., 190M291, 251NW274. See Dun. Dig. 10403, n. 6.

Evidence held to support finding that branch manager who, during a trip to summer home of friend to seek information as to qualification of a person he intended to hire, departed from scope of employment when he remained as guest and engaged in pastime of fishing when accident occurred. Hoskins v. A., 190M397, 251NW909. See Dun. Dig. 10405.

A man of advanced years is as much within the protection of the workmen's compensation act as is a young man, age being but a factor to be considered in determining whether accident is proximate cause of disability. Furlong v. N., 190M552, 252NW656. See Dun. Dig. 10406.

Injury received by employee while crossing highway toward his home after alighting from truck regularly furnished by employer to transport employees to and from work arose out of and in course of employment. Markoff v. E., 190M555, 252NW439. See Dun. Dig. 10404.

Burden of proving that accident arises out of and in course of employment is upon claimant. Henry v. O., 191M92, 253NW110. See Dun. Dig. 10403.

Where an employee is killed (1) within his usual working hours, (2) at usual place of his employment, and (3) while using a tool, machine, or vehicle regularly furnished by employer, and there is no evidence as to whether at time of accident employee was serving his employer or whether he was pursuing personal business, a presumption arises that employee was acting within course of his employment. This presumption sustains the burden of proof until rebutted by satisfactory evidence. Id.

Whether employee's disability resulted from a previous infectious condition or from an accidental injury was, under conflicting medical testimony, a question of fact for determination of industrial commission. Rutz v. T., 191M227, 253NW665. See Dun. Dig. 10426.

A farm laborer working for monthly wage and on duty at all times is covered by compensation in attending to his personal wants on premises, and even when in cot-

tage furnished for use of his family on the farm. *Mar-goles v. S.*, 191M358, 254NW457. See Dun. Dig. 10404.

Finding that fatal accident to officer of real estate corporation from accidental discharge of gun which he had brought to office for purpose of sale did not arise out of or in course of employment, held sustained by evidence. *Hicken v. E.*, 191M439, 254NW615. See Dun. Dig. 10405.

Evidence that employee's disability is due to progress of an arthritic condition of his back and not to an accident supports finding of Industrial Commission denying compensation. *Duchant v. O.*, 192M443, 256NW905. See Dun. Dig. 10406.

Driver of a school bus, fatally injured on his way to schoolhouse to get pupils and take them to their homes met his death by an accident arising out of and in course of his employment. *Lee v. V.*, 192M449, 257NW90. See Dun. Dig. 10404.

Evidence held to sustain finding that investigator of industrial commission was acting in course of employment while stepping off of a street car into path of automobile. *Hardy v. S.*, 193M46, 257NW497. See Dun. Dig. 10404.

Death of city fireman, accidentally killed while working under orders of his chief, in attempted rescue of men asphyxiated in a well just outside city limits, held to have been due to accident arising out of and in course of his employment. *Grym v. C.*, 193M62, 257NW661. See Dun. Dig. 10404.

As a general rule an injury suffered by an employee in going to or returning from employer's premises where work of his employment is carried on does not arise out of his employment so as to entitle him to compensation. *Heifrich v. R.*, 193M107, 258NW26. See Dun. Dig. 10405.

Employee struck by automobile of another employee while on a private street used by several employers in common, held not injured in an accident arising out of or in the course of employment or upon the working premises of his employer, and workmen's compensation act did not apply in action against driver of automobile. *Id.*

An employee whose regular services are performed at a stated place is not under compensation act while coming to or going therefrom; but, if subject to emergency calls, after his regular day's labor is ended, he is under act from time he leaves his home on such call until he returns. *Nehring v. M.*, 193M169, 258NW307. See Dun. Dig. 10403.

Where an employee suffered injury at hands of third persons, who, angered at their inability to gain admittance to an entertainment given by employer, following a safety rally, attacked another employee of company, and injured employee came to attacked employee's assistance, and, after leaving scene of hostilities, was attacked by third person and suffered injury complained of, at time injury was received respondent was a guest and not an employee of relator and hence injury was not suffered in course of employment, being attacked for reasons purely personal to him. *Lehman v. B.*, 193M462, 258NW821. See Dun. Dig. 10405.

Death of advertising solicitor from monoxide poisoning while repairing his automobile in garage, held not to arise out of and in course of his employment. *Soule v. R.*, 194M345, 260NW360. See Dun. Dig. 10405.

Where salesman was found dead in his overturned truck in territory assigned to him, presumption arises that he was within course of his employment at time of accident. *Olson v. E.*, 194M458, 261NW3. See Dun. Dig. 10406.

Evidence held to support finding that deceased met his death outside course of his employment and from hazards not connected with a special errand previously performed. *Lundeen v. K.*, 196M100, 264NW435. See Dun. Dig. 10405.

Evidence held to sustain finding that traveling salesman injured in an accident between 1 and 2 A. M. on Sunday was not entitled to compensation. *Dahley v. E.*, 196M428, 265NW284. See Dun. Dig. 10405.

Decedent's death caused by poison gas used in fumigating mill where he was employed held not to arise out of and in the course of his employment because he violated his employer's instructions in entering mill. *Anderson v. R.*, 196M358, 267NW501. See Dun. Dig. 10400.

Relationship of master and servant must exist and be in force when accident occurs. *Reinhard v. U.*, 197M371, 267NW223. See Dun. Dig. 10403.

Whether a film salesman was acting in course of his employment when returning to stopping place on regular state highway held a question of fact, he having departed from such regular highway for a frolic and having returned to it. *Id.*

Evidence held to sustain finding of commission that employee in automobile had departed from his employment at time of accident. *Johnson v. N.*, 197M616, 268NW1. See Dun. Dig. 10403.

Burden is upon employee to show that injuries arose out of and in course of his employment. *Thompson v. G.*, 198M547, 270NW594. See Dun. Dig. 10403, 10406.

An employee is not within protection of act when as a voluntary accommodation to his employer he performs duties outside scope of his employment. *Id.*

Where employee living at home with his parents was employed by a corporation of which his father was president, and place of business was family home, was injured while putting a storm door on a room used by him as his own bedroom, finding that injuries did not arise

out of and in course of his employment, held supported by evidence. *Id.*

In a compensation proceeding, where medical testimony as to causal connection between relator's present disability and an accident arising out of his employment, was in sharp conflict, and it was asserted that employee's medical experts based their opinions on absence of symptoms conclusively proved to exist, there was sufficient evidence to support denial of compensation. *Gardner v. S.*, 193M172, 271NW597. See Dun. Dig. 10406.

Death of automobile salesman on a return trip to employer's place of business arises out of and in course of his employment. *Jeffers v. B.*, 199M348, 272NW168. See Dun. Dig. 10403.

Stopping of automobile salesman for supper at home of his wife's folks did not take him out of his employment. *Id.* See Dun. Dig. 10404.

A city canvasser selling corsets was acting in course of her employment while going from territory assigned to her to employer's office in evening to attend meeting for instructions. *Whalen v. B.*, 200M171, 273NW678. See Dun. Dig. 10404.

Where accidental injury does not occur upon premises of employer, nor while employee is actually engaged in work of employment, nor at a place where his presence is required in performance of his work, it is difficult for dependents of an employee killed in an accident to prove that it arose out of and in course of his employment, but law places such burden upon one seeking compensation. *Bronson v. N.*, 200M237, 273NW681. See Dun. Dig. 10403.

Evidence held to sustain finding of commission that radio broadcaster and continuity writer killed in an automobile accident at 1:10 in the morning was not acting within the scope of his employment and was not on his way to radio station at time of accident. *Id.* See Dun. Dig. 10405.

Whether diabetic gangrene and resultant death was result of bump on leg held question of fact. *Sutlief v. N.*, 201M127, 275NW692. See Dun. Dig. 10406.

Agency of causation having been applied during course of employment, it is immaterial that, without an independent, intervening cause unrelated to employment, culmination in sunstroke collapse did not occur until immediately after employment of deceased was at an end for the day. *Ueltschi v. C.*, 201M302, 276NW220. See Dun. Dig. 10403.

Evidence sustained finding that disability from prior injury to back was not due to nor aggravated by, nor in any way attributable to, an accidental injury suffered while employed by defendant. *Hill v. U.*, 201M569, 277NW9. See Dun. Dig. 10406.

When employee in discharge of his duties is required to go upon highway he continues under protection of act while on homeward portion of his journey, though his employment has been terminated. *Howlett v. M.*, 202M247, 277NW913. See Dun. Dig. 10403.

Evidence held to sustain finding that perthes' disease was not aggravated by injury to hip. *Henz v. A.*, 202M213, 277NW923. See Dun. Dig. 10397.

Violating order against riding on conveyor did not take employee out of course of his employment where he jumped upon conveyor to take him to a point where work required that he set a case for the diversion of goods. *Prentice v. T.*, 202M455, 278NW895. See Dun. Dig. 10400.

Death of one employed as a caretaker by man and his wife operating resort property, killed while crossing railroad tracks which he was required to cross in going to place where he was directed to work, arose out of and in course of his employment. *Oberg v. D.*, 202M476, 279NW221. See Dun. Dig. 10403.

Where employee on vacation outside his territory as a field man was killed while driving there to another place under what amounted to specific directions from his employer to go "at the earliest possible moment" to attend to an urgent matter for his employer, he was, as a matter of law, in course of his employment, since employer's business was at least a concurrent cause of necessity for journey, although employee also served a purpose of his own in returning to his territory. *Fox v. A.*, 203M245, 280NW856. See Dun. Dig. 10404.

A salesman who had finished his work in his territory and was riding with employer's representative to a point outside of his territory was not in course of his employment, and workmen's compensation act was no defense in an action for injuries. *Pettit v. S.*, 203M270, 281NW44. See Dun. Dig. 10395.

Where traveling salesman residing in St. Peter had duty to perform in New Ulm for his employer, but took his daughter through New Ulm to Pipestone for a purpose personal to him, he was not acting in the course of his employment while on his return from Pipestone to New Ulm, where he intended to take care of his employer's business. *Kayser v. C.*, 203M578, 282NW801. See Dun. Dig. 10405.

Where road grader contractor regularly furnished transportation from place of work to camp, employee was under act while returning to camp after work for the day was completed. *Gehrke v. W.*, 204M445, 284NW434. See Dun. Dig. 10404.

One losing train fare and attempting to steal train ride instead of wiring to employer for money departed from course and scope of his employment. *Kaselnak v. F.*, 285NW482. See Dun. Dig. 10405.

An injury arises out of employment when there is apparent to rational mind a causal connection between conditions under which work is required to be performed and resulting injury; but excludes an injury which cannot fairly be traced to employment as a contributing proximate cause thereto. *Id.* See Dun. Dig. 10403.

An employee who fractured a shoulder by falling on ice while returning to place of her employment after a visit to a physician pursuant to direction of employer to obtain medical attention to an injury suffered in course of her employment, was entitled to compensation. *Fitzgibbons v. C.*, 285NW528. See Dun. Dig. 10403.

Where employment exposed an employee to risk of injury from others, injury resulting from horseplay by such persons, in which employee did not participate and tried to avoid, arises out of and in course of employment. *McKenzie v. R.*, 285NW529. See Dun. Dig. 10403(99).

An express messenger employed in a baggage car was within his employment while seeking protection from the cold in another baggage car nearby during the time he was waiting for the baggage car in which he was to work to be attached to a train. *Id.* See Dun. Dig. 10403.

As question is pending before industrial commission, attorney general will not determine whether or not PWA workers, FERA workers and SERA workers are employees of the state. *Op. Atty. Gen.* (523g-18), June 4, 1934.

City is liable for compensation to members of fire department while on calls outside village limits under direction of village officers, whether or not there exists a contract with adjacent territory. *Op. Atty. Gen.* (688p), Aug. 29, 1934.

"Personal injuries arising out of and in the course of employment." 15MinnLawRev792.

Injuries occurring in another state.

Business of air lines company operating between St. Paul and Chicago, held localized in Minnesota, where trips commenced and ended in St. Paul except for short lay-over in Chicago, and assignments of work and payments of salaries were made in St. Paul, so that pilot's right to compensation for injuries during employment was governed by the Minnesota compensation act exclusively, though the accident occurred in Wisconsin and his contract of employment was made in Iowa. *Severson v. H.*, (CCA8), 105P(2d)622.

Where resident of Minnesota was engaged in building roads in the state, and employed plaintiff on a road in Iowa and had him come to Minnesota after he completed the road in Iowa, and he was injured in Minnesota the Minnesota Compensation applied. 171M366, 214NW55.

Minnesota compensation act governed where salesman resident in Minnesota was injured in South Dakota, the employer having a branch office in Minneapolis and the principal office in Chicago. 173M481, 217NW680.

Traveling salesman working in another state for corporation located in Minnesota, was within Minnesota Compensation Act. *Brameld v. A.*, 186M89, 242NW465. See Dun. Dig. 10387.

Evidence sustained finding that injury to traveling salesman arose in course of his employment. *Brameld v. A.*, 186M89, 242NW465.

One working in plant in another state operating under different name for business reasons held employee entitled to compensation. *Melhus v. S.*, 188M304, 247NW2. See Dun. Dig. 10395, 10426.

(k) Singular and plural.

Double disabilities coming within the 400 weeks' provisions under subdivisions 28 to 37 of §4274 relate only to total disability of at least two members. 177M589, 225NW 895.

Where there was permanent partial disability of two legs, it was proper to double compensation allowable for a partial permanent disability of one leg as provided in paragraphs 19 and 41. *Smith v. K.*, 197M558, 269NW633, amending opinion in 267NW478. See Dun. Dig. 10410.

(m) Farm laborers and commercial threshermen and balers.

See notes under §4268.

Employee in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 177M503, 225NW428.

One operating a silo filler for commercial thresherman and cornshredderman, held not a "farm laborer." 178M 512, 227NW661.

A farmer threshing for his neighbors may be a "commercial thresherman." 178M519, 227NW663.

Engineer of threshing outfit owned by farmer and used by him to thresh his own grain and that of his neighbors, held an employee of a "commercial thresherman." 180M 49, 230NW274.

An employee whose principal employment is that of a caretaker of resort property is not a farm laborer simply because at moment he is doing work on a farm. *Oberg v. D.*, 202M476, 279NW221. See Dun. Dig. 10394.

4327. Occupational diseases—How regarded—Compensation, etc.

(9) * * * * *

24. The following occupational diseases due to the hazards of fire fighting, myocarditis, coronary sclerosis, and pneumonia or its sequelae in firemen.

24. Active duty with organized fire department.

(Added to Subd. (9) Apr. 20, 1939, c. 306.)

(10) * * * * *

Contracting pneumonia by city fireman held not "accident." 173M564, 218NW126.

Chronic benzol poisoning is an occupational disease covered by par. 7, of subd. 9, and is compensable when disability results from employment in a process involving use of a benzol preparation. *Funk v. M.*, 192M440, 256NW889. See Dun. Dig. 10398.

Existence of disease in body of workman at time of accident does not prevent recovery of compensation if accident accelerates disease to a degree of disability, accident having occurred in course of employment and at place where workman was employed. *Susnik v. O.*, 193 M129, 258NW23. See Dun. Dig. 10397.

Bronchial asthma produced by chemical poisoning in a grain elevator from breathing fumes caused by treatment of grain is not a compensable disease. *Clark v. B.*, 195M44, 261NW596. See Dun. Dig. 10398.

Injuries of an employee cannot be classified under both §4268 and §4327. *Id.*

Occupational diseases. 22MinnLawRev77.

(3)

Sudden death from arteriosclerosis with thrombosis held not compensable, such a death coming in course of an employee's usual work, without extraneous cause, even overexertion not being accidental. *Stanton v. M.*, 195M457, 263NW433. See Dun. Dig. 10396.

4327-1. Report by physicians and investigation and control of occupational diseases.—Any physician having under his professional care any person whom he believes to be suffering from poisoning from lead, phosphorus, arsenic, brass, silica dust, carbon monoxide gas, wood alcohol or mercury or their compounds, or from anthrax or from compressed-air illness or any other disease, contracted as a result of the nature of the employment of such person shall, within five days, mail to the state department of health a report, stating the name, address and occupation of such patient, the name, address and business of his employer, the nature of the disease and such other information as may reasonably be required by said department. The department shall prepare and furnish the physicians of this state suitable blanks for the reports herein required. No report made pursuant to the provisions of this section shall be admissible as evidence of the facts therein stated in any action at law or in any action under the workmen's compensation act against any employer of such diseased person. The state department of health is authorized to investigate and to make recommendations for the elimination or prevention of occupational diseases which have been reported to it or which shall be reported to it in accordance with the provisions of this section. Said department is also authorized to study and provide advice in regard to conditions that may be suspected of causing occupational diseases, provided information obtained upon investigations made in accordance with the provisions of this section shall not be admissible as evidence in any action at law to recover damages for personal injury or in any action under the workmen's compensation act; provided further, that nothing herein contained shall be construed to interfere with or limit the powers of the department of labor and industry to make inspections of places of employment or issue orders for the protection of the health of the persons therein employed. Whenever upon investigation by the state board of health said board reaches a conclusion that a condition exists which is dangerous to the life and health of the workers in any industry or factory or other industrial institutions, it shall file a report thereon with the state depart-

ment of labor and industry. (Act Apr. 20, 1939, c. 322.)

4330. Laws repealed.

Disability allowances to city employees, see Laws 1929, c. 106.

175M319, 222NW508; note under §4279.

Readjustment of settlement under law as it stood in 1920. 175Minn319, 221NW65.

Medical and hospital expenses covering more than 90 days and amounting to more than \$100 was allowable by the court under Laws 1919, c. 354. 175M319, 221NW65.

The approval of a settlement in a workmen's compensation matter under the Act of 1913, c. 467, is not a judgment, as regards limitations. 176M554, 223NW926.

4330-1. Settlement of claims.—An employe or dependent may by a stipulation or agreement settle a claim for compensation with the employer or his insurer, but no such settlement shall be of any force or validity whatsoever until such settlement has been reduced to writing, signed by the parties, approved by the Industrial Commission, and an award has been made thereon by the Commission. All awards pursuant to such settlement shall be subject to reopening in accordance with Section 4319, Mason's Minnesota Statutes of 1927, notwithstanding any statement or agreement to the contrary which may be contained in any such settlement. Such settlement shall be approved by the Industrial Commission only where the terms thereof except as to the amount conform to the Compensation Act.

The matter of the approving or disapproving proposed settlements shall rest in the discretion of the Industrial Commission and the burden of showing that any proposed settlement is fair, reasonable and in conformity with the act except as to the amount shall be on the parties. (Act Apr. 29, 1935, c. 313, §1.)

Sec. 2 of Act Apr. 29, 1935, cited, provides that the act shall take effect from its passage.

GENERAL PROVISIONS

4331 to 4334-1. [Repealed.]

Repealed by Act Apr. 29, 1935, c. 315, §2, effective on and after July 1, 1935.

Explanatory note: "Laws 1921, c. 82, §32," should read "Laws 1921, c. 82, §33," as section 32 referred by legislature is not pertinent. See §4293.

4337-1. Application of act to state employees—powers and duties of Industrial Commission and attorney general.—The Workmen's Compensation Act of Minnesota shall apply to all employees of the State of Minnesota employed in any department thereof. It shall be the primary duty of the Industrial Commission to defend the state and its several departments against workmen's compensation claims whenever, after investigation, it shall deem such defense necessary or advisable. But the Attorney General may at any time and at any stage of a compensation proceeding take over and assume such defense, and upon request of the Industrial Commission or any department of the state, shall take over and assume such defense. For the purpose of such defense, the Industrial Commission shall have authority to provide for medical examinations of injured employes, procure the attendance at hearings of expert and other witnesses and do any other act necessary to a proper defense. All expenses incurred in such defense shall be charged to the department involved and be paid out of the State Compensation Revolving Fund.

The Commission shall have power to employ not to exceed two attorneys and one stenographer and their salaries shall be apportioned among the several departments of the state in the proportion that the amount of compensation paid during the fiscal year by any such department bears to the total amount of compensation paid by all departments during such year, and the salaries shall be paid out of the State Compensation Revolving Fund. ('27, c. 436, §1; Apr. 29, 1935, c. 315, §1.)

Persons employed by State Livestock Sanitary Board to assist its veterinarian are "employees" of the state. 179M425, 229NW560.

Determination as to which of two successive employers was liable for occupational blindness held to be determin-

ed from conflicting medical expert testimony. Farley v. N., 184M277, 238NW485. See Dun. Dig. 3326(36), 10393.

Administrative employees of State Relief Agency are employees of state. Op. Atty. Gen. (523g-19), Apr. 6, 1936.

4337-1a. Laws repealed.—Sections 4331, 4332, 4333, 4334 and 4334-1 of Mason's Minnesota Statutes of 1927, and all acts or parts of acts inconsistent therewith, are hereby repealed. (Act Apr. 29, 1935, c. 315, §2.)

4337-1b. Effective July 1, 1935.—This act shall take effect and be in force on and after July 1, 1935. (Act Apr. 29, 1935, c. 315, §3.)

4337-2. Same—Reports by heads of state departments to industrial commission.

Explanatory note: "Laws 1921, c. 82, §32" evidently should read "Laws 1921, c. 82, §33." See §4293.

4337-5. Same—Payment of compensation awarded.

Any overpayment made to an employe during period of healing may be deducted from the compensation due the employe for the permanent disability sustained or for any medical expenses the employe may have incurred. Op. Atty. Gen., Aug. 25, 1931.

Act is constitutional insofar as it applies to railroad and warehouse commission: Op. Atty. Gen., May 16, 1933.

4337-6. State compensation revolving fund established.—In order to facilitate the discharge by the state of its obligations under the workmen's compensation act, there is hereby established a revolving fund to be known and designated as the State Compensation Revolving Fund. The sum of \$32,000.00 is hereby appropriated from monies in the state treasury not otherwise appropriated for the purpose of taking care of claims for compensation which are now due or may accrue between now and July 1, 1935 to injured employes under the Workmen's Compensation Act who are actually employed and who receive their salaries direct from the revenue fund and are not to be used in the payment of compensation of injured employes in departments of the state supported in whole or in part by fees or where such employes are employed in departments where the salaries of such employes are fixed by any managing or governing board which board controls the expenditure of appropriations made to such department.

The unexpended balance of said sum, if any, remaining on July 1, 1935, together with the sums to be paid into said fund by the several state departments and divisions thereof as hereinafter provided, shall constitute said fund. The state treasurer shall be the custodian of said fund, and no monies for awards of compensation benefits shall be paid out of said fund except in the manner now provided for payment of awards by the Industrial Commission pursuant to Chapter 436, General Laws 1927, [§§4337-1 to 4337-5], provided, however, that monies required to be paid out in accordance with paragraphs one and two of Section two hereof may be paid out upon the warrants of the Industrial Commission. (Act Apr. 5, 1933, c. 161, §1.)

There is no appropriation which would warrant any state department from entering into agreement with federal government to assume liability for injuries to federal emergency relief workers, and in absence of such appropriation no such agreement may be made. Op. Atty. Gen. (523g-6), June 4, 1934.

Signing of application for approval of emergency relief administration work projects, containing an agreement to carry workmen's insurance to protect workers, would be entering into a contract between the state and the federal government, which contract must be signed by the department of administration and finance and no other department of the state government, and even such department would have no authority to sign such an application in the absence of an appropriation by the legislature. Op. Atty. Gen. (517n), June 7, 1934.

Employees of state relief agency created for temporary purposes are employees of a department of state entitled to benefits of workmen's compensation act payable out of state compensation revolving fund. Op. Atty. Gen. (523g-19), Apr. 1, 1936.

4337-7. Payments to be made from fund.—Out of said fund shall hereafter be made all of the following payments in the following order:

(1) The actual cost to the Industrial Commission of the administration of the Workmen's Compensation Act in its application to the employes of the several state departments and divisions thereof.

(2) All necessary expenses incurred by the Industrial Commission or the Attorney General's office in defending against or investigating any claim against the state for compensation.

(3) All awards made by the Industrial Commission for compensation and medical, hospital and other expenses to injured state employes or their dependents. (Act Apr. 5, 1933, c. 161, §2.)

4337-8. Departments to pay into fund.—Every state department wherein the salaries of its employes are fixed by a managing or governing board, which board controls the expenditures of appropriations made to such departments, and which said departments are hereby declared to be self-sustaining departments for the purposes of this act, and every state department or division thereof which, since the passage of Chapter 436, General Laws 1927, has been and now is substantially financially self-sustaining by reason of income and revenue from its activities, shall within 30 days after the passage of this act, or as soon thereafter as funds therefor are available, but not later than July 1, 1933, pay into said revolving fund such sum as has heretofore been paid by the state to employes of said department or division, or to the dependents of such employes, since the passage of and pursuant to Chapter 436, General Laws 1927, and the sums to be so paid back and departments or divisions thereof which shall pay the same are hereby determined and fixed as follows:

Agricultural Society	\$ 4,035.17
Division of Game and Fish	8,311.93
Railroad and Warehouse Commission	11,395.16
University of Minnesota	14,852.41
Rural Credits	5,392.21

(Act Apr. 5, 1933, c. 161, §3.)

4337-9. Maintenance of fund.—This fund shall be maintained as follows:

(1) Every state department wherein the salaries of its employes are fixed by a managing or governing board, which board controls the expenditures of appropriations made to such departments, and which said departments are by section (3) hereof declared to be self-sustaining departments for the purpose of this act, and every state department or division thereof which is substantially financially self-sustaining by reason of income and revenue from its activities shall at the end of every fiscal year pay into such fund such sum as the Industrial Commission shall certify has been paid out of said revolving fund during said year to employes of said departments or divisions thereof or to dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in Section two hereof, provided that on and after July 1, 1935, the State Highway Department shall reimburse said fund for moneys paid to its employes or their dependents at such times and in such amounts as the Industrial Commission may by order require.

(2) Departments or divisions of the state which are not self-sustaining to any substantial degree shall at the end of every biennium beginning June 30, 1935 pay into said fund such sum as the Industrial Commission shall certify has been paid out of said revolving fund during said biennium to employes of said departments or divisions or the dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in section two hereof. It is hereby made the duty of the heads of such departments of the state to anticipate and make provision for said payments by including them in their budget requests to the legislature.

(3) Departments or divisions thereof which are partially self-sustaining shall at the end of every fiscal year pay into said fund such proportion of the sum which the Industrial Commission shall certify has been paid out of said revolving fund during said year to employes of said departments or divisions thereof or the dependents of said employes on account of compensation, medical, hospital or other expenses as enumerated in section two hereof, as the total of their income and revenue bears to their annual cost of operating, and at the end of every biennium beginning June 30, 1935, shall pay the balance of the sums so certified and during said biennium shall anticipate and make provision for such payments by including the same in their budget requests to the legislature.

There is hereby appropriated from the Trunk Highway Fund of the Department of Highways in the State Treasury not otherwise appropriated the sum of \$74,013.12, to be credited to the State Compensation Revolving Fund, and to be used in connection with the payment of workmen's compensation claims of employes of the Department of Highways of the State of Minnesota which, with \$75,986.88 already appropriated, totals \$150,000.00; the latter sum to constitute the State Compensation Revolving Fund and to be used and maintained as herein provided. (Apr. 5, 1933, c. 161, §4; Apr. 29, 1935, c. 312, §1; Jan. 20, 1939, c. 3.)

Act Jan. 20, 1939, cited, adds the second paragraph to subdivision (3).

Sec. 2 of Act Apr. 29, 1935, cited repeals §4337-10, effective July 1, 1935.

Sec. 3 of said act provides that the act shall take effect on and after July 1, 1935.

Relief funds appropriated to executive council may not be appropriated and expended in reimbursement to state compensation revolving fund for injuries sustained by employes of executive council. Op. Atty. Gen. (928c-16), July 23, 1937.

Department of executive council is not "substantially, financially self-sustaining," and compensation revolving fund should be reimbursed out of appropriations by the legislature. Id.

(1) Provision that department substantially financially self-sustaining shall at the end of each fiscal year pay into fund such sum as industrial commission shall certify has been paid out, as appearing in Laws 1935 c. 312, was not retroactive in nature but did cover period from July 1, 1934, to June 30, 1935. Op. Atty. Gen. (523a-23), July 24, 1935.

4337-10. [Repealed.]

Repealed by Act Apr. 29, 1935, c. 312, §2, effective July 1, 1935.

Sec. 6 of Act Apr. 5, 1933, cited, provides that the act shall take effect on its passage.

CHAPTER 23AA

Minnesota Unemployment Compensation Law

4337-21. Declaration of Public Policy.—As a guide to the interpretation and application of this Act, the public policy of this state is declared to be as follows: Economic insecurity due to unemployment is a serious menace to the health, morals, and welfare of the people of this State. Involuntary unemployment is therefore a subject of general interest and concern which requires appropriate action by the legis-

lature to prevent its spread and to lighten its burdens. This can be provided by encouraging employers to provide more stable employment and by the systematic accumulation of funds during periods of employment to provide benefits for periods of unemployment, thus maintaining purchasing power and limiting the serious social consequences of poor relief assistance. The legislature, therefore, declares that in

its considered judgment the public good and the general welfare of the citizens of this State will be promoted by providing, under the police powers of the State for the compulsory setting aside of unemployment reserves to be used for the benefit of persons unemployed through no fault of their own. (Act Dec. 24, 1936, Ex. Ses., c. 2, §1.)

The title to this act is as follows: To create an unemployment compensation fund from contributions by employers for the payment of compensation for involuntary unemployment, to provide for merit ratings for employers with creditable employment records, to provide for guarantee employment accounts, to provide for cooperation with the Social Security Board of the United States of America, to provide penalties for the violation of said act, to provide for the administration thereof, and to appropriate money therefor.

4337-22. Definitions.—As used in this act, unless the context clearly requires otherwise—

A. (1) "Annual pay roll" means the total amount of wages payable by an employer (regardless of the time of payment) for employment during a calendar year.

(2) "Average annual payroll" means the average of the annual pay rolls of any employer for the last three or five preceding calendar years, whichever average is higher.

B. "Benefits" means the money payments payable to an individual as provided in this act, with respect to his unemployment.

C. "Commission" means the industrial commission of the state of Minnesota.

D. "Contributions" means the payments to the state unemployment compensation fund required by this act.

E. "Employing Unit" means any individual or type of organization, including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Notwithstanding any inconsistent provision of this act whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of Section 2(f) [§4337-22F herein] or Section 9(c) of this act [§4337-29(C), herein] the employing unit shall for all the purposes of this act be deemed to employ each such contractor or subcontractor and individuals in his employ for each day during which such contractor, subcontractor, and individual, is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of Section 2(f) [§4337-22F] of this act shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work.

F. "Employer" means:

(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of .20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any cal-

endar year subsequent to 1936, an employing unit which, for some portion of a day, in each of twenty (20) different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state of Minnesota, within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day.)

(2) Any employing unit which acquired the organization, trade, or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing units or interests or both, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraph (1), (2), (3), or (4), has not, under Section 9, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 9(c) any other employing unit which has elected to become fully subject to this act.

G. "Employee" means every individual, whether male, female, citizen, alien or minor, who is performing, or subsequent to January first, 1936, has performed services for an employer in an employment subject to this act.

H. (1) Subject to the other provisions of this subsection "employment" means service, including service in inter-state commerce, or otherwise performed for wages or under any contract of hire, written or oral, express or implied, where the relationship of master and servant exists.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if: (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Services not covered under paragraph (2) of this subsection and performed entirely without this state, with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the Federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the commission approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be "employment" subject to this act unless and until it is shown to the satisfaction of the commission that the relationship of master and servant does not exist as specified in subdivision 1 hereof or (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of service and in fact; and (b) such service in either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall not include:

(a) Service performed in the employ of this state, or of any political subdivision thereof, or of any instrumentality of this state or its political subdivisions;

(b) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that if the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment fund under a state unemployment compensation act, then, to the extent permitted by Congress, and from and after the date as of which such permission becomes effective, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services.

(c) Service performed after June 30, 1939, for an employer determined to be subject to the railroad unemployment insurance act by the agency or agencies empowered to make such determination by an act of congress; and service as an employee representative determined to be subject to said act by said agency or agencies; and service with respect to which unemployment compensation is payable under any other unemployment compensation system established by an act of Congress, provided that the commission is hereby authorized and directed to enter into agreements with the proper agencies under such act or acts of congress, which agreements shall become effective ten days after publication thereof in the manner provided in section 10(d) and 10(m) [§4337-30(d, m), herein] of this act of general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act or acts of congress, acquired rights to benefits under this act;

(d) Agricultural labor;

(e) Domestic service in a private home;

(f) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(g) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(h) Service performed as a part time student worker whose principal occupation during the year is as a student actually attending a public or private school;

(i) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

(j) Service performed in the employ of any farmers' cooperative association dealing exclusively with

agricultural or dairy products or farmers' mutual insurance company, not included in the definition of employer under section 907 of the social security act.

(k) Services performed subsequent to December 31, 1939, outside of the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census, for an employer who has paid all contributions due and payable for employment during all past periods and who is not subject to Title IX of the Federal Social Security Act [Mason's USCA, Title 42, §§1101 to 1110], as now in force or hereafter amended, provided the services of all of such employer's employes are performed outside of such corporate limits. For the purpose of this provision service shall be deemed to be performed outside of such corporate limits if (1) performed entirely outside of such corporate limits; or (2) performed both outside and within such corporate limits, if the service performed within such corporate limits is incidental to the individual's service outside such corporate limits and is temporary or transitory in nature or consists of isolated transactions.

I. "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices.

J. "Fund" means the unemployment compensation fund established by this act, to which all contributions required and from which all benefits provided under this act shall be paid.

K. "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

L. "Unemployment"—An individual shall be deemed "unemployed" in any week during which he performs no services and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The commission may prescribe regulations applicable to unemployed individuals making such distinctions in the procedures and the amount of benefits payable within the limitations of this act, as to total unemployment, part-total unemployment, and partial unemployment of individuals attached to their regular jobs and other forms of short-time work as the commission deems necessary.

M. "Unemployment compensation administration fund" means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

N. "Wages" means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. Gratuities customarily received by an individual in the course of his employment from persons other than his employing unit shall be treated as wages payable by his employing unit. The reasonable cash values of remuneration payable in any medium other than cash, and the reasonable amount of gratuities, shall be estimated and determined in accordance with rules prescribed by the commission.

O. "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the commission.

P. "Weekly benefit amount"—An individual's "weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 5 of this act, which he would be entitled to receive for such week, if totally unemployed and eligible.

Q. "Benefit year" with respect to any individual means the 52 consecutive week period beginning with the first day of the first week with respect to which the individual files a valid claim for benefits. Any claim for benefits made in accordance with the 1938

[1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-28(a) shall be deemed to be a valid claim for the purposes of this subsection if the individual has earned the wage credits for employment by employers required under the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-26 E and F as amended by this act.

R. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

S. "Person" means an individual, trust or estate, a partnership or a corporation.

T. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof as the commission may by regulation prescribe. (Dec. 24, 1936, Ex. Ses., c. 2, §2; Mar. 2, 1937, c. 43, §1; Apr. 19, 1937, c. 306; Apr. 22, 1939, c. 443, §1.)

Sec. 3 of Act Mar. 2, 1937, cited, provides that the Act shall take effect from its passage.

If certain hospitals are liable for contribution under federal act, they would gain nothing by claiming exemption under state act, and might lose to their employees right to participate in benefits. Op. Atty. Gen. (885g-4), Mar. 18, 1937.

Persons employed in municipal liquor stores, municipal power plants and waterworks, county fairs and cemeteries owned and operated by municipalities, are not employees subject to act. Op. Atty. Gen. (885t), Jan. 13, 1938.

F. (1).

(f) (1).

An employer comes under act for year 1936 if he had eight employees during that year, and for the year 1937, if he has one or more employees during that year, and one becomes employer within act if he has one or more employees during 1937, though he did not have eight employees during 1936. Op. Atty. Gen. (885i), Apr. 12, 1937.

H.

Where work is done on a dam in Mississippi River on boundary, all work done on dam on Minnesota side of center of channel is subject to Minnesota unemployment compensation act. Op. Atty. Gen. (885b), Mar. 9, 1937.

H. (5).

Whether a particular hospital must contribute is a question of fact, and if a hospital is liable to the federal tax, it would be good policy to consent to be subject to provisions of Minnesota act, though they might not be liable to taxation under constitution, art. 9, §1. Op. Atty. Gen. (885g-4), Mar. 18, 1937.

Employees of a cemetery association, a private organization maintained not for profit, are not engaged in "employment" within the act. Op. Atty. Gen. (870a), March 1, 1939.

H. (6).

An employee of a nursery or an employee of a florist is an agricultural laborer so long as he is engaged in cultivation of soil, plants, shrubbery or other products of that nature, but a distinction is made with respect to salesmen and clerical help. Op. Atty. Gen. (923), March 10, 1939.

4337-23. Unemployment Compensation Fund—

A. Establishment—How constituted.—There is hereby established as a special fund, separate and apart from all public moneys or funds of this State, an unemployment compensation fund, which shall be administered by the commission exclusively for the purposes of this act. This fund shall consist of (1) all contributions collected under this act, together with any interest thereon collected pursuant to section 14 of this act; (2) all fines and penalties collected pursuant to the provisions of this act; (3) interest earned upon any moneys in the fund; (4) any property or securities acquired through the use of moneys belonging to the fund; and (5) all earnings of such property or securities. All moneys in the fund shall be mingled and undivided.

B. Custodian—Separate accounts—Deposits in bank—Bond.—The State Treasurer shall be ex officio the treasurer and custodian of the fund, who shall administer such fund in accordance with the directions of the commission and shall issue his warrants upon it in accordance with such regulations as the commission shall prescribe. He shall maintain within the fund three separate accounts; (1) a clearing account, (2)

an unemployment trust fund account, and (3) a benefit account. All moneys payable to the fund, upon receipt thereof by the commission, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. Refunds payable pursuant to section 14 of this act [§4337-34, herein] may be paid from the clearing account upon warrants issued by the treasurer under the direction of the commission. After clearance thereof, all other moneys in the clearing account shall be immediately deposited with the secretary of the treasury of the United States of America to the credit of the account of this State in the unemployment trust fund, established and maintained pursuant to section 904 of the social security act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund, and shall be used exclusively for the payment of benefits as provided in this act. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the commission, in any banks or public depository in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties as custodian of the fund in an amount fixed by the commission and in a form prescribed by law or approved by the Attorney General. Premiums for said bond shall be paid from the administration fund.

C. Withdrawals.—Moneys shall be requisitioned from this state's account in the unemployment trust fund solely for the payment of benefits and in accordance with regulations prescribed by the commission. The commission shall from time to time requisition from the unemployment trust fund such amounts, not exceeding the amounts standing to its account therein, as it deems necessary for the payment of benefits for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter-signature of a member of the commission or its duly authorized agent for that purpose. Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits during succeeding periods, or, in the discretion of the commission, shall be re-deposited with the secretary of the treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection (b) of this section.

D. Transfer of money from state account in hands of Secretary of the Treasury to railroad unemployment insurance account.—Notwithstanding any requirements of the foregoing subsections of this section, the commission shall, prior to whichever is the later of (1) thirty days after the close of this session of the legislature and (2) July 1, 1939, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in the unemployment trust fund established and maintained pursuant to section 904 of the social security act as amended [Mason's USCA, Supp. 4, Title 42, §1104],

to the railroad unemployment insurance account, established and maintained pursuant to section 10 of the railroad unemployment insurance act [Mason's USCA July, 1938, Pamphlet, Title 45, p. 267, §10], an amount hereinafter referred to as the preliminary amount; and shall prior to whichever is later of (1) thirty days after the close of this session of the legislature and (2) January 1, 1940, authorize and direct the secretary of the treasury of the United States to transfer from this state's account in said unemployment trust fund to said railroad unemployment insurance account an additional amount, hereinafter referred to as the liquidating amount. The social security board shall determine both such amounts after consultation with the railroad retirement board and the commission. The preliminary amount shall consist of that proportion of the balance in the unemployment compensation fund as of June 30, 1939, as the total amount of contribution collected from "employers" (as the term "employer" is defined in section 1 (a) of the Railroad Unemployment Insurance Act [Mason's USCA July, 1938 Pamphlet, Title 45, p. 261, §1(a)] and credited to the unemployment compensation fund bears to all contributions theretofore collected under this act and credited to the unemployment compensation fund. The liquidating amount shall consist of the total amount of contributions collected from "employers" (as the term "employer" is defined in section 1 (a) of the railroad unemployment insurance act) pursuant to the provisions of this act during the period July 1, 1939, to December 31, 1939, inclusive. (Act Dec. 24, 1936, Ex. Ses. c. 2, §3; Apr. 26, 1937, c. 452, §1; Apr. 22, 1939, c. 443, §2.)

Editorial note.—Power conferred on the industrial commission is transferred to the director of employment and security by Act Apr. 22, 1939, c. 431, Art. 7, §2(11)(d), ante §3199-102(11)(d).

Act Apr. 26, 1937, cited, amended subdivision (B).

Word "warrant" is synonymous with "ordinary check" or "written order". Op. Atty. Gen. (885u), Dec. 20, 1937.

General bond of state treasurer does not cover unemployment compensation. Op. Atty. Gen. (885q-1), Apr. 14, 1937.

(C). Member of commission designated by Industrial Commission is authorized to requisition money from unemployment trust fund to be placed in benefit account. Op. Atty. Gen. (885e-4), Jan. 5, 1938.

Victor Christgau was duly appointed and qualified director of Division of Employment and Security, with all powers and duties previously vested in industrial commission under the Unemployment Compensation Law and §4046(3) and §4254 of Mason's Stat., and with power to requisition money from the unemployment trust fund in custody of the Secretary of the Treasury of the United States. Op. Atty. Gen. (88a), June 30, 1939.

4337-24. Contributions from employers—A. Payments.—(1) On and after January 1, 1936, contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages payable for employment (as defined in section 2(h)[H]) accruing during such calendar year. Such contributions shall become due and be paid by each employer to the commission for the fund in accordance with such regulations as the commission may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in his employ. No rule of the commission shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by Title IX of the social security act. [Mason's U. S. C. A., Supp. 4, Title 42, §§1101 to 1110.]

(2) In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to one cent.

B. Rate of contribution.—Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(1) Nine-tenths of one per centum with respect to employment during the calendar year 1936; .

(2) One and eight-tenths per centum with respect to employment during the calendar year 1937;

(3) Two and seven-tenths per centum with respect to employment during the calendar year 1938, 1939, 1940; and

(4) With respect to employment after December 31, 1940, two and seven-tenths per centum, except as may be otherwise determined by the commission pursuant to subsection (c) of this section, except that no contributions shall accrue or become payable for the calendar year 1940 with respect to employment by an employer of less than eight individuals during the calendar year 1939 (as defined in 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 F(1) for the year 1936) who has been subject to this act for the calendar year 1938 and 1939, and no beneficiary wages (as defined in subsection (c) (2) of this section) have resulted during the calendar year 1939; provided that such employer has, prior to January 31, 1940, paid all contributions due and payable for employment during all past periods, and provided further that such employer is not liable or does not become liable for the tax for the year 1940 under title IX of the federal social security act [Mason's U. S. C. A., Supp. 4, Title 42, §§1101 to 1110];

C. Future contributions—Determination—Beneficiary wages—Average rate—Schedules.—(1) The commission shall, for the year 1941 and for each calendar year thereafter, determine the contribution rate of each employer after three calendar years immediately preceding, throughout which any individual in his employ could have received benefits if eligible. Each employer's rate shall be determined in accordance with the requirements hereinafter provided.

(2) "Beneficiary wages", for the purpose of this section, means wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in subsection (D) of 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-25 [4337-25(D), herein], "beneficiary wages" shall mean the proportion of wages paid or payable by an employer to an employee for seasonal employment during his base period which is allowed to the employee as wage credits under the provisions of subsection (C) of 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, section 4337-25 [4337-25(C), herein.] "Beneficiary wages" as defined in this subsection shall be treated as though they had been paid or payable or computed from wages paid or payable in the calendar year in which such employee's benefit year commenced and benefits are paid or payable; provided, however, that in the event funds are not made available for determining the beneficiary wages for the calendar year 1938 prior to the effective date of this subsection, then the beneficiary wages of each employer for the calendar year 1938 shall be deemed to be the average of his beneficiary wages for the calendar years 1939 and 1940.

(3) The total "beneficiary wages" of any employer for a given calendar year shall be the total of the beneficiary wages (as defined in subsection (C) (2) of this section) paid or payable by him for employment to all of his employees and former employees who commenced a benefit year and to whom benefits are paid or payable in such calendar year.

(4) The "beneficiary wage ratio" of each employer for the year 1941 and for each calendar year thereafter shall be a percentage equal to the total of his beneficiary wages for the three immediately preceding completed calendar years divided by his total taxable payroll for the same three years on which all contributions have been paid to the commission prior to January 31 of the calendar year with respect to which his beneficiary wage ratio is determined.

(5) The commission shall, for the year 1941 and for each calendar year thereafter, determine the average contribution rate to be applied to the total, current, employers' payroll for employment. Such average contribution rate shall be determined on the basis of the ratio of the total assets of the fund, excluding contributions not yet paid at the beginning of such calendar year, to the average (one-third) of the total amount of benefits paid during the three calendar years immediately preceding, and in accordance with the following schedule:

Ration of total assets of Average annual contribution rate, to be applied to defined above, and set the total current taxable forth below.

When amount in fund is equal to or more than:	
3 1/2 times average benefits paid.....	1.50
3 times, but less than 3 1/2 times average benefits paid	1.75
2 1/2 times, but less than 3 times average benefits paid	2.00
2 times, but less than 2 1/2 times average benefits paid	2.25
1 1/2 times, but less than 2 times average benefits paid	2.50
Amount in fund less than 1 1/2 times average benefits paid	2.75

(6) The commission, after having determined the average contribution rate for the current calendar year, shall:

(a) prepare a schedule of contribution rates for the current calendar year including and centered about the average contribution rate and such rates shall be graduated in equal number above and below the average rate in differentials of one-fourth of one per cent, commencing with a minimum rate of one-half of one per cent;

(b) divide the sum of all employers' payrolls for employment during the preceding calendar year into categories of equal amount. The number of such categories shall be equal to the number of rates as set forth in the schedule of employers' contribution rates for the current year;

(c) assign a contribution rate to each payroll category in accordance with the schedule of rates for the current calendar year commencing with one-half of one per cent and classify employers in accordance with their beneficiary wage ratios, commencing with the lowest ratio;

(d) allocate the payrolls of employers for the preceding calendar year into separate categories in order of their beneficiary wage ratios as classified, commencing with the lowest ratio and the payroll category having the lowest contribution rate. When an employer's payroll falls within two payroll categories, his entire payroll shall be allocated to the category into which more than 50 per centum of his payroll falls; in case 50 per centum of an employer's payroll falls within each of two categories, his total payroll shall be allocated to the category having the lower rate.

(7) Each employer's contribution rate for the year 1941 and for each year thereafter shall be the rate applicable to the payroll category to which his payroll has been allocated except if such rate applicable to the payroll category to which his payroll has been allocated exceeds 3.2 per cent, his contribution rate shall be 3.2 per cent; provided, however, that no employer's contribution rate shall be less than 2.7 per cent unless such employer has paid all contributions due and payable by him.

D. Separate account for each employer.—The commission shall maintain a separate account for each employer, and shall credit his account with all the contributions which he has paid on his own behalf. But nothing in this Act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by him into the fund either on his own behalf or on behalf of such indi-

viduals. (Dec. 24, 1936, Ex. Ses., c. 2, §4; Apr. 19, 1937, c. 306, §2; Apr. 22, 1939, c. 443, §3.)

A. Payments.
Contributions by employer under protest must be immediately transferred to Washington. Op. Atty. Gen. (885q-7), Mar. 3, 1937.

A. (1).
Employer is not excused from making contributions to state fund because as a result of failure to make payments within time provided by regulations of commission and federal act he is not entitled to credit for such state contributions under federal act. Op. Atty. Gen. (885g-2), Dec. 16, 1937.

Tax provisions of Social Security Act. 22MinnLawRev 299.

4337-25. Benefits payable.—A. Time of accrual—Non-eligibility in certain instances. Beginning January 1, 1938, benefits shall become payable from the fund; provided that wages earned for services defined in 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 H (b) (c) as amended by this act, irrespective of when performed, shall not be included for purposes of determining eligibility under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-26 E and F as amended by this act or weekly benefit amount under subsection B of this section for the purposes of any benefit year commencing on or after July 1, 1939, nor shall any benefits with respect to unemployment occurring on and after July 1, 1939, be payable under subsection (c) of this section on basis of such wages. All benefits shall be paid through employment offices, in accordance with such regulations as the commission may prescribe.

B. (1) Weekly benefit amount. An individual's "weekly benefit amount" shall be an amount equal to 1/25th of his total wage credits for employment by an employer or employers during that quarter of his base period in which such total wage credits were highest, except that if such amount is more than \$15.00, the weekly benefit amount shall be deemed to be \$15.00, or if less than \$5.00, shall be paid at the rate of \$5.00 per week; provided, however, that this latter provision shall not be construed so as to increase the total maximum amount payable for the duration of a benefit year, and if such weekly benefit amount is not a multiple of \$1.00 shall be computed to the next higher multiple of \$1.00.

(2) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his wages (if any) payable to him with respect to such week which is in excess of \$3.00. Such benefit, if not a multiple of \$1.00 shall be computed to the next higher multiple of \$1.00.

C. Total amount of benefits in benefit year—Wage credits defined. Any otherwise eligible individual shall be entitled during any benefit year to a total amount of benefits equal to whichever is the lesser of (1) 16 times his weekly benefit amount, and (2) one-third of the wage credits earned by him in employment by an employer or employers during his base period, provided that such total amount of benefits, if not a multiple of \$1.00, shall be computed to the next higher multiple of \$1.00. For the purpose of this section, wage credits shall be counted as "wages for employment by employers" for benefit purposes with respect to any benefit year only if such benefit year begins subsequent to the date on which the employer from whom such wages were earned has satisfied the conditions of 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-22 F or Section 4337-29 C as amended by this act with respect to becoming an employer.

As used in this act, the term "wage credits" means the amount of wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in subsection D of this section "wage credit" shall mean the proportion (computed to the next highest multiple of

five per cent) of such wages which the customary period of operation determined as provided in subsection D of such seasonal employment bears to a calendar year.

D. (1) **Seasonal employment—Hearing and determination—Appeal.** "Seasonal employment" means employment in any industry or any establishment or class of occupation in any industry which is engaged in activities relating to the first processing of seasonally produced agricultural products in which; because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in any calendar year. The commission shall, after investigation and hearing, determine and may thereafter from time to time redetermine such customary period or periods of seasonal operations. Until the effective date of such determination by the commission, no employment shall be deemed seasonal.

(2) Any employer who contends that employment in his industry or any establishment or occupation in such industry is seasonal shall file with the commission a written application for a hearing and determination of such matter. Upon receipt of such application, the commission shall fix a time and place for such hearing and shall give the employer written notice thereof of not less than 15 days prior to the time of such hearing. Within three days after receipt of such notice, the employer shall post in a conspicuous place in each department of each establishment of his industry, with respect to which such application was made, a written notice setting forth the time and place of such hearing and shall cause such notice to be published in the first next issue of the legal newspaper published nearest such place of business and shall furnish to the commission proof of such posting and publication.

(3) In order to insure the prompt disposition of all applications for seasonality determinations, the commission shall designate one or more representatives, herein referred to as referees, to conduct hearings thereon at which hearings the employer and his employees shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. After having heard the matter, the referee shall promptly make findings of fact and render a decision thereon. Notice of such decision together with a copy of the findings of fact and the decision shall be promptly given to the parties to the hearing, and unless the employer or any other party to such matter, within ten calendar days after the delivery of such notice or within 12 calendar days after such notice was mailed to his last known address, files an appeal with the commission from such decision, such decision shall be final, and benefits shall be paid or denied in accordance therewith.

(4) The commission may, on its own motion, cause an investigation of any industry or class of occupation in any industry which it believes to be seasonal in nature, and, after a hearing on such matter, the referee may make findings of fact and render his decision thereon based upon the facts disclosed by such investigation and hearing.

(5) Any employer, employee, or other party to the hearing may appeal from the decision of the referee in the same manner as appeals are provided for in this act relative to decisions made by an appeal tribunal in regard to claims for benefits under this act. (Dec. 24, 1936, Ex. Ses., c. 2, §5; Apr. 19, 1937, c. 306, §3; Apr. 22, 1939, c. 443, §4.)

Commission may distinguish between "part time employee" and a person who is "partially unemployed" and limit payment of benefit to persons who are "partially unemployed," and payments of partial benefits may be limited to those persons who are registered for full time employment and who are able and willing to accept such full time employment, as distinguished from employees who do not work full time for a personal reason. Op. Atty. Gen. (885c-1), Nov. 23, 1937.

Eligible applicant is not entitled to benefits in excess of amount standing to his credit in his account. Op. Atty. Gen. (885c-1), Jan. 5, 1938.

4337-26. Benefit eligibility conditions.—An unemployed individual shall be eligible to receive benefits with respect to any week only if the commission finds that—

A. **Registration.** He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the commission may prescribe; except that the commission may by regulation waive or alter either or both of the requirements of this subsection as to individuals attached to regular jobs and as to such other types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this act; provided that no such regulation shall conflict with 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-25 A as amended by this act;

B. **Claim.** He has made a claim for benefits in accordance with such regulations as the commission may prescribe;

C. **Ability to work.** He was able to work and was available for work;

D. **Character and duration of unemployment.** He has been unemployed for a waiting period of two weeks. Such weeks of unemployment need not be consecutive. No week shall be counted as a week of unemployment for the purposes of this subsection:

(1) if benefits have been paid with respect thereto;

(2) unless the individual was eligible for benefits with respect thereto as provided in 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-26 and 4337-27 as amended by this act except for the requirements of this subsection and of subsection G of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-27 as amended by this act;

(3) unless it occurs within the benefit year, which includes the week with respect to which he claims payment of benefits;

(4) unless it occurs after benefits first could become payable to any individual under this act.

E. **Earning of credits in base period.** He has during his base period earned wage credits for employment by employers equal to not less than 30 times his weekly benefit amount.

F. **Amount of earnings.** He has during that quarter in which his total wages were highest in his base period earned wage credits for employment by employers equal to not less than \$75.00. (Dec. 24, 1936, Ex. Ses., c. 2, §6; Mar. 2, 1937, c. 43, §2; Apr. 19, 1937, c. 306, §4; Apr. 22, 1939, c. 443, §5.)

Sec. 3 of Act Mar. 2, 1937, cited, provides that the Act shall take effect from its passage.

4337-27. Disqualification for benefits.—An individual shall be disqualified for benefits:

A. **Quitting work without cause.**—For voluntarily discontinuing his most recent employment without good cause attributable to the employer, if so found by the commission. Benefits paid on wage credits earned for employment with such employer shall not be considered in determining any individual employer's future contribution rate under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

B. **Discharge for misconduct.**—If he has been discharged for misconduct connected with his most recent employment, if so found by the commission. Benefits paid on wage credits earned for such employment shall not be considered in determining any individual employer's future contribution rate under 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

C. **Marriage.**—If it is shown to the satisfaction of the commission that such individual's unemployment

was caused by separation from employment pursuant to a rule of such individual's most recent employer whereby any female in the employ of such employer shall be dismissed upon acquiring a marital status; provided, however, that such rule shall have been in effect and posted in a conspicuous place in each establishment of the employer's place of business not less than 6 months immediately preceding the date such individual filed a valid claim for benefits, and provided, further, that such employer shall notify the commission of the existence of said rule in his establishment within four (4) days after the dismissal of such employe from employment, except that this disqualification shall not apply to a female who constitutes the main support of an immediate member of her family.

D. Refusal to accept work offered.—If the commission finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the commission or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the commission. Such disqualification shall continue for the week in which such failure occurred and for not less than one nor more than the five weeks which immediately follow such week (in addition to the waiting period) as determined by the commission according to the circumstances in each case.

(1) In determining whether or not any work is suitable for an individual, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

E. Strikes.—For any week with respect to which the commission finds that his total or partial unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed: Provided that this subsection shall not apply if it is shown to the satisfaction of the commission that—

(1) He is not participating in or financing the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which, immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing the dispute; and provided further, that if in any case separate branches of work, which are commonly conducted as separate businesses in separate premises, are conducted in separate departments of the same premises, each such department shall for the purposes of this subsection be deemed to be a separate factory, establishment, or other premises.

F. Receiving other remuneration.—For the week with respect to which he is receiving or has received remuneration in the form of—

(1) Wages in lieu of notice;

(2) Compensation for temporary partial disability under the workmen's compensation law of any state or under a similar law of the United States; or

(3) Old-age benefits under Title II of the social security act, as amended, or similar payments under any act of Congress;

Provided, that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week if otherwise eligible, benefits reduced by the amount of such remuneration.

G. Reception of benefits from federal or other state laws.—For any week with respect to which or a part of which he has received or is seeking unemployment benefits under an unemployment compensation law of another state or of the United States; provided, that if the appropriate agency of such other state or of the United States finally determines that he is not entitled to such unemployment benefits, this disqualification shall not apply. (Dec. 24, 1936, Ex. Ses., c. 2, §7; Apr. 24, 1937, c. 401, §1; Apr. 22, 1939, c. 443, §6.)

Sec. 2 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

4337-28. Claims for benefits—A. How made.—Claims for benefits shall be made in accordance with such regulations as the commission may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the commission to each employer without cost to him.

B. Examination and initial determination of claims—Appeal.—The commission shall promptly examine the claims for benefits made pursuant to this section, and, on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates. Notice of any determination, together with the reasons therefor, shall be promptly given the claimant; and notice of any determination under which the claimant is held to be eligible for benefits shall be given to all other interested parties to such determination, including the claimant's most recent employing unit, provided that the commission may dispense with giving notice to any such party, parties, or employing unit and such party, parties, or employing unit shall not be entitled to such notice, if it has either (1) in writing waived notice, or (2) failed to indicate prior to the determination, if and as required by regulations of the commission, that the claimant may be disqualified for such benefits. Unless the claimant or such other interested party, parties, or employing unit or units within ten calendar days after the delivery of such notification, or within 12 calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is filed, benefits with respect to the period prior to the final decision of the commission, on appeal, shall be paid only after such decision; provided that, except in respect to cases arising under 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-27, subsection E as amended by this act, if an appeal tribunal affirms an initial determination or the commission affirms a decision of the appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, such benefits so paid shall not be considered in determining any individual employer's future contribution rate under 1938 [1940] Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24, subsection C as amended by this act.

C. Decision of appeal tribunal.—Unless such appeal is withdrawn, an appeal tribunal, after affording the parties reasonable opportunity for fair hearing, shall affirm, modify, or set aside the initial determination. The parties shall be duly notified of such tribunal's decision, together with its reasons therefor, which shall be deemed to be the final decision of the commission, unless within ten days after the date of notification or mailing of such decision, further appeal is initiated pursuant to subsection (e) of this section.

D. Appeal Tribunals.—In order to assure the prompt disposition of all claims for benefits, the commission shall establish one or more impartial appeal tribunals consisting of a salaried examiner, who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the commission and be paid a fee of not more than \$10.00 per day of active service on such tribunal plus necessary expenses. The commission shall by regulation prescribe the procedure by which such appeal tribunals may hear and decide disputed claims, subject to appeal to the commission. No person shall participate on behalf of the commission in any case in which he is an interested party. The commission may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs or other costs imposed upon the employee in prosecuting his appeal.

E. Commission review of appeal tribunal's decision.—The commission may, on its own motion, affirm, modify, or set aside any decision of an appeal tribunal on the basis of the evidence previously submitted in such case, or direct the taking of additional evidence, or may permit any of the parties to such decision to initiate further appeals before it. In any case in which a claim for benefits has been allowed or denied an appeal shall be allowed before the commission and an opportunity for a fair hearing granted. The commission shall promptly notify the interested parties of its findings and decision.

F. Rules and regulations—Record—Testimony.—The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the commission for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

G. Fees of witnesses.—Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the commission. Such fees shall be deemed a part of the expense of administering this act.

H. Appeal to Courts.—Any decision of the commission in the absence of an appeal therefrom as herein provided, shall become final ten days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the commission, as provided by this act. The commission shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the commission and has been designated by it for that purpose or, at the commission's request, by the attorney general.

I. Appeal to Supreme Court.—Within 20 days after the filing of any decision of the commission or within ten days after any such decision has become final, any party aggrieved thereby may secure judicial review thereof by taking an appeal from such decision to the Supreme Court of the State of Minnesota in the same manner provided for the taking of appeals in civil cases.

J. Representation by agent or attorney—Fees.—In any proceeding under this act before an appeal tribunal or the commission, a party may be represented by an agent or attorney, but no individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the appeal tribunal, the commission, or its representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the commission or its representatives or a court may be represented by counsel or other duly authorized agent except that said agent in any court proceedings under this act must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the commission and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law. (Dec. 24, 1936, Ex. Ses., c. 2, §8; Apr. 19, 1937, c. 306, §5; Apr. 22, 1939, c. 443, §7.)

Notice of initial determination by a referee should be given to all interested parties, and all employers of applicant during his base period are parties of interest. Op. Atty. Gen. (885f-2), Oct. 15, 1937.

Right of appeal is not limited to cases where a dispute exists under §4337-27(d), or where referee on his own initiative refers question of right of applicant to benefits, or a question as to amount of or duration thereof. Id.

E. Commission review of appeal tribunals decision.
Director reviewing cases appealed from appellate tribunal must give opportunity for a fair hearing, including argument by interested parties. Op. Atty. Gen. (885m-3), Sept. 15, 1939.

Director reviewing an order of appellate tribunal allowing a claim for benefits must give an opportunity for argument by interested parties. Op. Atty. Gen. (885m-3), Sept. 21, 1939.

F. Procedure.
Argument presented by counsel or appellant based upon testimony already received or upon law need not be reported. Op. Atty. Gen. (885m-3), Sept. 15, 1939.

J. Representation by agent or attorney.
Director may not adopt a valid rule or regulation requiring an appealing party to pay a small fee for a copy of transcript made by appellate tribunal, unless the appealing party desires a copy, law not requiring a copy. Op. Atty. Gen. (885m-3), Sept. 15, 1939.

4337-29. Period, election and termination of employer's coverage.—A. Any employing unit which is or becomes an employer subject to this Act within any calendar year shall be subject to this Act during the whole of such calendar year.

B. Except as otherwise provided in subsection (c) of this section, an employing unit shall cease to be an employer subject to this Act only as of the first day of January of any calendar year, if it files with the commission, prior to the 5th day of January of such year, a written application for termination of coverage, and the commission finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment subject to this Act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of section 2 (f) shall be treated as a single employing unit.

C. (1) An employing unit, not otherwise subject to this Act, which files with the commission its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the commission, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of January 1 of any calendar year subsequent to such two calendar years, only, if at least thirty

days prior to such 1st day of January, it has filed with the commission a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this Act are performed, may file with the commission a written election that all such services performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this Act for not less than two calendar years. Upon the written approval of such election by the commission, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment subject hereto as of January 1st of any calendar year subsequent to such two calendar years only if at least 30 days prior to such 1st day of January such employing unit has filed with the commission a written notice to that effect. (Dec. 24, 1936, c. 2, §9; Apr. 19, 1937, c. 306, §6.)

4337-30. Administration—A. Industrial commission.—The commission shall administer this act and shall appoint such officers and employees as may be necessary for the administration thereof and shall establish a division of unemployment compensation and shall employ a full-time salaried director for the division of unemployment compensation herein established.

B. Quorum.—Any two commissioners shall constitute a quorum. No vacancy shall impair the right of the remaining commissioners to exercise all of the powers of the commission.

C. Rules and regulations.—The commission shall have power and authority to adopt, amend or rescind such rules and regulations, make such expenditures, require such reports, make such investigations and take such other action as it deems necessary or suitable in the administration of this Act. Such rules and regulations shall be effective upon publication in the manner, not inconsistent with the provisions of this Act, which the commission shall prescribe. Not later than the 1st day of August of each year, the commission shall submit to the Governor a report covering the administration and operation of this Act during the preceding calendar year and shall make such recommendations for amendments to this Act as the commission deems proper. Whenever the commission believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, it shall promptly so inform the Governor and the legislature and make recommendations with respect thereto.

D. Publication of act.—The commission shall cause to be printed for distribution to the public the text of this Act, the commission's regulations and general rules and its annual reports to the Governor, and any other material the commission deems relevant and suitable.

E. Personnel.—Subject to the provisions of the state civil service act and to the other provisions of this Act, the commission is authorized to appoint, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of its duties. The commission may delegate to any such person so appointed such power and authority as it deems reasonable and proper for the effective administration of this Act, and may in its discretion bond any person handling moneys or signing checks hereunder.

F. Advisory councils.—The commission shall appoint a state advisory council and may appoint such local advisory councils as it deems advisable, composed in each case of an equal number of employer representatives and employee representatives who may fairly be regarded as representatives because of their vocation, employment, or affiliation, and of such members representing the general public as the commission may designate. Such councils shall aid the commission in formulating policies and discussing prob-

lems related to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. Such advisory councils shall serve without compensation, but shall be reimbursed for any necessary expenses.

G. Employment stabilization.—The commission, with the advice and aid of its advisory councils, and through its appropriate divisions, shall take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts, and the State, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the State in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

H. Records and reports.—Each employing unit shall keep true and accurate work records containing such information as the commission may prescribe. Such records shall be open to inspection and be subject to being copied by the commission or its authorized representatives at any reasonable time and as often as may be necessary. The commission may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the commission deems necessary for the effective administration of this Act. Information thus obtained or obtained from any individual pursuant to the administration of this act except to the extent necessary for the presentation of a claim shall be held confidential and shall not be published or be open to public inspection in any manner revealing the individual's or employing unit's identity, except that, upon request therefor, the commission may, in its discretion, furnish such information to any other department of this state charged with the compilation of statistical matter or the administration of a recognized compensation, relief, or welfare law of this state or any other department of this state for the purpose of performing its public duties, and any claimant at a hearing before an appeal tribunal or the commission shall be supplied with information from such records to the extent necessary for the proper presentation of his claim; provided, however, that any such information so furnished to any such department or individual shall be held confidential and shall not be published or be open to public inspection, except with respect to statistical summaries. Any individual who violates any provision of this subsection, shall be subject to the penalties provided for in this act. (As amended Apr. 22, 1939, c. 443, §10.)

I. Oaths and witnesses.—In the discharge of the duties imposed by this Act the chairman of an appeal tribunal, any duly authorized representative or member of the commission shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

J. Subpoenas.—In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this State within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commission or its duly authorized representative, shall have jurisdiction to issue to such person an order requiring such person to appear before a commissioner, the commission, or its duly authorized representative, there to produce evidence if so ordered or there to give testimony touching 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.

K. Protection against self-incrimination.—No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commission or its duly authorized representative or in obedience to the subpoena of the commission or any member thereof or any duly authorized representative of the commission in any cause or proceeding before the commission or its duly authorized representative on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

L. State—Federal cooperation.—In the administration of this act, the commission may afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law and shall cooperate to the fullest extent consistent with the provisions of this act, with the social security board, created by the social security act, approved August 14, 1935, as amended; shall make such reports in such form and containing such information as the social security board may from time to time require, and shall comply with such provisions as the social security board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the social security board governing the expenditures of such sums as may be allotted and paid to this state under Title III of the social security act for the purpose of assisting in the administration of this act.

Upon request therefor, the commission shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and employment status of each recipient of benefits and such recipient's right to further benefits under this act. (Dec. 24, 1936, Ex. Ses., c. 2, §10; Apr. 19, 1937, c. 306, §7; Apr. 22, 1939, c. 441, §42; Apr. 22, 1939, c. 443, §§8, 10.)

M. Rules and Regulations.—General and special rules may be adopted, amended, or rescinded by the Commission which rules shall become effective ten (10) days after publication of the same in one or more newspapers of general circulation in this state, provided that any employer, employee or other person whose interest is or may be affected thereby may object to any such rule within ten (10) days after publication thereof by filing with the Commission a petition setting forth the grounds of objection to said rule and request for hearing thereon, whereupon a hearing shall thereafter be had before the Commission at a time and place designated by the Commission after due notice of said hearing has been served by the Commission or duly authorized person, upon the objecting party or parties not less than five (5) days before said hearing.

Regulations may be adopted, amended, or rescinded by the Commission and shall become effective in the manner and at the time prescribed by the Commission. (Dec. 24, 1936, Ex. Ses., c. 2, §10; Apr. 19, 1937, c. 306, §7; Apr. 22, 1939, c. 441, §42.)

Act Apr. 22, 1939, c. 441, §42, cited, amends subdivision E.
Act Apr. 22, 1939, c. 443, cited, amends subdivisions F, H, and L.

E. Personnel.
Persons employed by divisions on January 1, 1938, should not be denied opportunity to take competitive examinations because they are over fifty years of age or

because their formal schooling is less than that prescribed by employment specifications. Op. Atty. Gen. (885m-7), Oct. 10, 1938.

Rules and regulations with respect to qualifying age limit will not prevail over Veterans' Preference Act. Op. Atty. Gen. (270), Jan. 16, 1939.

Qualified veteran should be certified ahead of those entitled to preference by virtue of incumbency. Op. Atty. Gen. (885), Feb. 17, 1939.

Regulations cannot alter preference given by statute to veterans. Id.

Commission of administration and finance has same duty to perform with reference to bonds given by employees of unemployment compensation division it has with reference to bonds given by employees of other departments, except that penalties and position to be bonded are not designated by it, such bonds to be filed with secretary of state as in other cases, but unemployment commission is to designate employees to be bonded, and amount thereof. Op. Atty. Gen. (885), April 13, 1939.

4337-31. Reciprocal benefit arrangements.—The Commission is hereby authorized to enter into arrangements with the appropriate agencies of other states or the federal government whereby individuals performing services in this and other states for a single employing unit under circumstances not specifically provided for in Section 2F of this act [§4337-22F, herein], or under similar provisions in the unemployment compensation laws of such other States, shall be deemed to be engaged in employment performed entirely within this State or within one of such other states, and whereby potential right to benefits accumulated under the unemployment compensation laws of several states or under such a law of the Federal Government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the commission finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund.

B. Reimbursements as between governmental bodies.—The commission is also authorized to enter into arrangements with the appropriate agencies of other states or of the federal government (1) whereby wages or services, upon the basis of which an individual may become entitled to benefits under the unemployment compensation law of another state or of the federal government, shall be deemed to be wages for employment by employers for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-25 and 4337-26 E and F as amended by this act, provided such other state agency or agency of the federal government has agreed to reimburse the fund for such portion of benefits paid under this act upon the basis of such wages or services as the commission finds will be fair and reasonable as to all affected interests, and (2) whereby the commission will reimburse other state or federal agencies charged with the administration of unemployment compensation laws with such reasonable portion of benefits, paid under the law of any such other states or of the federal government upon the basis of employment or wages for employment by employers, as the commission finds will be fair and reasonable as to all affected interests. Reimbursements so payable shall be deemed to be benefits for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 4337-23 and 4337-25 C as amended by this act, but no reimbursement so payable shall affect any employer's account for the purposes of 1938 Supplement to Mason's Minnesota Statutes of 1927, Section 4337-24 as amended by this act. The commission is hereby authorized to make to other state or federal agencies and receive from such other state or federal agencies, reimbursements from or to the fund, in accordance with arrangements pursuant to this section. (Dec. 24, 1936, Ex. Ses., c. 2, §11; Apr. 19, 1937, c. 306, §8; Apr. 22, 1939, c. 443, §9.)

4337-32. Commission shall establish and maintain free public employment offices.—A. Acceptance of federal Act.—The commission shall establish and maintain under the division of employment free public employment offices, in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing

such duties as are within the purview of the act of Congress entitled "An act to provide for the establishment of a national employment system and for cooperation with the states in the promotion of such system, and for other purposes", approved June 6, 1933 (48 Stat. 113; U. S. C. Title 29, Sec. 49 (c)), as amended. The provisions of said act of Congress, as amended, are hereby accepted by the state, in conformity with Section 4 of said act and this state will observe and comply with the requirements thereof.

B. Financing.—All moneys received by this state under the said act of Congress, as amended, shall be paid into the special "employment service account" in the unemployment compensation administration fund, and said moneys are hereby made available to the commission for the Minnesota state employment service to be expended as provided by this section and by said act of Congress. For the purpose of establishing and maintaining free public employment offices, the commission is authorized to enter into agreements with any political subdivision of this state or with any private, nonprofit organization and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service account.

C. Cooperation between governments.—The commission may cooperate with or enter into agreements with any agency of the United States charged with the administration of an unemployment compensation law, with respect to the establishment, maintenance, and use of free public employment offices, free employment service and unemployment compensation division facilities and may make the state's records relating to the administration of this act available to any such agency of the United States and may at the expense of such agency furnish copies of such records as such agency deems necessary for its purposes, and as a part of any such agreement the commission may accept moneys, services, or quarters as a contribution to the employment service or unemployment compensation division account. Moneys received from such agency for services, facilities, or copies of records shall be paid into the unemployment compensation administration fund and credited to the employment service or unemployment compensation division account thereof. (Dec. 24, 1936, Ex. Ses., c. 2, §12; Apr. 19, 1937, c. 306, §9; Apr. 22, 1939, c. 443, §11.)

Any political subdivision of state may contribute toward establishment of free public employment offices. Op. Atty. Gen. (885m-13), Dec. 18, 1937.

B. Financing.

School district may contribute money to unemployment service account. Op. Atty. Gen. (1596b-11), May 4, 1938.

4337-32a. Provisions severable.—The provisions of this act [§§4337-22 to 4337-28, 4337-30 (F, H, L), 4337-31, 4337-32] shall be separable, and if any provision or the application of any provision hereof shall be held unconstitutional or invalid, it shall not affect any other provision or application hereof. (Apr. 22, 1939, c. 443, §12.)

4337-32b. Rights and benefits under act—Effective date.—This act [§§4337-22 to 4337-28, 4337-30 (F, H, L), 4337-31, 4337-32] shall take effect and be in force from and after its passage, unless otherwise specifically provided therein, but shall not affect the rights to benefits of any individual for whom a benefit year has been established in accordance with provisions of law in force prior to the effective date of this act, and until the expiration of said benefit year so established, the rights to benefits of any such individual shall be in accordance with the provisions of law in force at the time of commencement of such benefit year, unless otherwise specifically provided therein; provided, however, that waiting period credits established within a period commencing 13 weeks immediately preceding the effective date of this act and ending two weeks after such effective date, shall have like effect as if established within the first two weeks immediately following such effective date. (Apr. 22, 1939, c. 443, §13.)

4337-33. Unemployment compensation administration fund—A. Special Fund.—There is hereby created in the State Treasury a special fund to be known as the unemployment compensation administration fund. All moneys which are deposited or paid into this fund are hereby appropriated and made available to the commission. All moneys in this fund shall be expended solely for the purpose of defraying the cost of the administration of this Act, and for no other purpose whatsoever, provided, however, that the initial appropriation made by the State of Minnesota in this Act may be returned to the State Treasury. The fund shall consist of all moneys appropriated by this State, and all moneys received from the United States of America, or any agency thereof, including the Social Security Board and the United States Employment Service, or from any other source, for such purpose. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for other special funds in the State Treasury. Any balance in this fund shall not lapse at any time but shall be continuously available to the commission for expenditure consistent with this Act. The State Treasurer shall give a separate and additional bond conditioned upon the faithful performance of his duties in connection with the unemployment compensation administration fund in an amount to be fixed by the commission and in a form prescribed by law or approved by the Attorney General. The premiums for such bond and the premiums for the bond given by the treasurer of the unemployment compensation fund under section 3 of this Act, shall be paid from the moneys in the unemployment compensation administration fund. (Act Dec. 24, 1936, Ex. Ses., c. 2, §13.)

State treasurer going into office January 4, 1937, was proper payee of unemployment compensation administration fund. Op. Atty. Gen. (885q), Dec. 31, 1936.

General bond of state treasurer does not cover unemployment compensation. Op. Atty. Gen. (885q-1), Apr. 14, 1937.

4337-34. Collection of contributions—A. Interest on past due contributions.—Contributions unpaid on the date on which they are due and payable, as prescribed by the commission, shall bear interest at the rate of one per centum per month from and after such date until payment plus accrued interest is received by the commission. Interest collected pursuant to this subsection shall be paid into the fund's pooled account.

B. Collection.—If, after due notice any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the commission, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date.

C. Priorities under legal dissolutions or distributions.—In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this State, including any receivership assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, contribution then or thereafter due shall be paid in full prior to all other claims except taxes and claims for wages of not more than \$250.00 to each claimant, earned within four months of the commencement of the proceeding. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the Federal Bankruptcy Act of 1898, as amended, contributions then or thereafter due shall be entitled to such priority as is provided in section 64 (b) of that Act (U.S.C. Title XI, Sec. 104 (b)), as amended.

D. Refunds.—If not later than one year after the date on which any contributions or interest thereon became due, an employer who has paid such con-

tributions or interest thereon shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and the commission shall determine that such contributions or interest or any portion thereof was erroneously collected, the commission shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such just adjustment cannot be made, the commission shall refund said amount without interest, from the fund. For like cause and within the same period, an adjustment or refund may be so made on the commission's own initiative. (Act Dec. 24, 1936, Ex. Ses., c. 2, §14.)

4337-35. Protection of rights and benefits—A. Waiver of rights void.—No agreement by an individual to waive release or commute his rights to benefits or any other rights under this Act shall be valid. No agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this Act from such employer, shall be valid. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, or require or accept any waiver of any right hereunder by any individual in his employ.

B. No assignment of benefits—Exemptions.—No assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this Act shall be valid; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts except debts incurred for necessities furnished to such individual or his spouse or dependents during the time when such individual was unemployed. No waiver of any exemption provided for in this subsection shall be valid. (Act Dec. 24, 1936, Ex. Ses., c. 2, §15.)

4337-36. Penalties.—A. Whoever violates any of the provisions of this Act shall be guilty of a misdemeanor and shall be punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days.

(b) Any person who wilfully makes a false statement of representation to obtain any benefit or payment under the provisions of this Act either for himself or another person or to cause or attempt to cause a lower contribution to be paid to the fund, or any person who wilfully refuses to pay a contribution to the fund shall be guilty of a misdemeanor and punished by a fine of not more than \$100.00 or by imprisonment of not longer than 90 days. (Act Dec. 24, 1936, Ex. Ses., c. 2, §16.)

4337-37. Representation in court.—In any civil action to enforce the provisions of this Act the com-

mission and the State may be represented by any qualified attorney who is a regular salaried employee of the commission and is designated by it for this purpose or at the commission's request by the Attorney General; an aggrieved employee shall be entitled to appear before any court by himself or with a licensed attorney. (Act Dec. 24, 1936, Ex. Ses., c. 2, §17.)

4337-38. Nonliability of state.—Benefits shall be deemed to be due and payable under this Act only to the extent provided in this Act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the State nor the commission shall be liable for any amount in excess of such sum. (Act Dec. 24, 1936, Ex. Ses., c. 2, §18.)

4337-39. Saving clause.—The legislature reserves the right to amend or repeal all or any part of this Act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this Act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this Act at any time. If for any reason the excise tax on wages provided for in Title IX of the Social Security Act is held to be invalid by the Supreme Court of the United States or the contributions imposed under this Act are held to be invalid by a court of last resort, or in case the Social Security Act is repealed, no further contributions shall be collected under this Act, and no further benefits paid, and any moneys in the unemployment compensation fund shall be held in a separate account by the Treasurer of the State of Minnesota pending the disposition thereof as may be provided by law. The contribution imposed under this Act shall not be collected for the calendar year 1936, if this Act is not approved by the Social Security Board and the State of Minnesota certified to the Secretary of the Treasury, as provided in Section 903 of the Social Security Act, previous to January 1, 1937. (Act Dec. 24, 1936, Ex. Ses., c. 2, §19.)

4337-40. Separability of provisions.—If any provision of this Act, or the application thereof to any person or circumstances is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances shall not be affected thereby, and if this Act should be held invalid in any of its provisions which differ from the Federal Social Security Act then, and in that event, the provisions of the Federal Social Security Act shall be read into and become a part of the provisions of this Act. (Act Dec. 24, 1936, Ex. Ses., c. 2, §20.)

4337-41. Short title.—This Act shall be known and may be cited as the "Minnesota Unemployment Compensation Law." (Act Dec. 24, 1936, Ex. Ses., c. 2, §21.)

4337-42. Effective date.—This Act shall take effect and be in force from and after its passage. (Act Dec. 24, 1936, Ex. Ses., c. 2, §22.)

CHAPTER 24

Soldiers' Home, Relief, Etc.

4344. Soldiers' Home—who may be admitted.—The Minnesota Soldiers' Home shall be maintained at Minneapolis, under the management of seven Trustees, one of whom shall be a woman, to be known as the "Soldiers' Home Board," as a home for honorably discharged soldiers, sailors and marines of the United States who served in the Mexican War, the War of the Rebellion, the Spanish-American War, or the Philippine Insurrection, or the Boxer Rebellion, or

members of the Minnesota National Guard mustered into Federal Service in 1916, and served on the Mexican border, or the war of 1917 and 1918 commonly called the "World War," and for persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not. But no person shall be admitted to the Home who has not been a resident of the state for three years next preceding the date of his