

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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**3244. Written application to be filed.**

A licensee having several stands for the sale of cigarettes in a building designed for a single purpose and under a single control is not required to obtain more than one license; and in the case of a club the same rule would apply whether sales were made to members of the club or to outsiders. Op. Atty. Gen., Mar. 1, 1930.

**3245. When license is not to be granted.**

Cigarette license should not be granted to an exclusive liquor store. Op. Atty. Gen., Mar. 26, 1934.

**3247. Dairy and food commissioner to enforce provisions of act.**

**Editorial note.**—The function and powers of the commissioner of agriculture and dairy and food conferred by this chapter of the statutes are transferred to the commission of taxation by Act Apr. 22, 1939, c. 431, Art. 6, §5, ante §2362-5.

**3248. Disposition of cigarette license fees.**—The fees collected under the provisions of this act shall be paid into the state treasury by the dairy and food commissioners. The state treasurer shall transmit ninety per cent of such license money annually to the treasurer of the city, village or township from which

the license is issued. The remaining ten per cent shall be credited to the General Revenue fund. ('19, c. 348, §9; Apr. 23, 1929, c. 291, §1.)

Refunds cannot be made to persons who obtained and paid for cigarette licenses and went out of business before the end of the current year for which the license was paid, unless money is appropriated for that purpose. Op. Atty. Gen., Nov. 24, 1931.

A municipality selling cigarettes at amusement centers is not obliged to obtain a license. Op. Atty. Gen., Jan. 29, 1932.

Penalties remain in state treasury and only fee should be distributed to local municipalities. Op. Atty. Gen., Apr. 6, 1932.

Refunds on licenses issued on state fair grounds should be credited to general revenue funds. Op. Atty. Gen. (196h), Nov. 17, 1936.

License cannot be refused municipal liquor store on ground that it is competition with private business and municipality is entitled to 90% refund. Op. Atty. Gen. (829e-4), Dec. 17, 1937.

**3249. Violation a misdemeanor.**

Where one is vending cigarettes by machine without retailer's license, inspector may take entire machine and its contents as evidence, but must return it after trial. Op. Atty. Gen., Apr. 2, 1934.

## CHAPTER 16B

## Athletic Commission

**3251 to 3260 [Repealed.]**

Repealed by Act Jan. 28, 1933, c. 7, §16, post, §3260-16, effective May 1, 1933.

**Annotations under 3252.**

State Athletic Commission could not validly give a bonus to the secretary of the commission as reimbursement for expenses incurred nor "in recognition of the efficiency in which he has handled the affairs of the commission." Op. Atty. Gen., June 2, 1931.

**Annotations under 3253.**

Since the enactment of this act contract for management of prize fighter is not illegal. *Safro v. L.*, 184M336, 238NW641.

**Annotations under 3259.**

The word "year" means the calendar year commencing on the first of January, and not commencing on the first day of June when members of the Athletic Commission are appointed. Op. Atty. Gen., Feb. 8, 1932.

**3260-1. State Athletic Commission created.**—There is hereby created The State Athletic Commission, to consist of five commissioners, citizens of this state, who shall be appointed by the governor and shall hold office for a term of three years, except as hereinafter provided, and until their successors are appointed and qualified. (Act Jan. 28, 1933, c. 7, §1.)

**3260-2. Governor to appoint.**—Within thirty days after the passage of this act the governor shall appoint as members of such commission one commissioner for a term of one year, two commissioners for a term of two years, and two commissioners for a term of three years, such term to commence on the first day of the month following such appointments. Any vacancy in office shall be filled by appointment by the governor for the unexpired portion of the term. No commissioner shall directly or indirectly promote any boxing or sparring exhibition or shall directly or indirectly engage in the managing of any boxer or be interested in any manner in any proceeds from any boxing match. (Act Jan. 28, 1933, c. 7, §2.)

**3260-3. Compensation—expenses.**—The commissioners shall serve without compensation but shall be reimbursed from the fund of the commission for their expenses actually and necessarily incurred in the performance of their duties. (Act Jan. 28, 1933, c. 7, §3.)

**3260-4. Commission to appoint boxing Commissioner and prescribe powers—compensation—assistants.**—The State Athletic Commission shall have power to appoint and at its pleasure remove a boxing commissioner and prescribe his powers and duties. The boxing commissioner shall be the secretary of the State

Athletic Commission but such commissioner shall not be a member of the commission. The salary of such commissioner shall be fixed by the commission at the sum not to exceed Thirty-six Hundred Dollars (\$3,600.00) per annum, in addition to expenses actually and necessarily incurred by such commissioner in the performance of his duties. Subject to the provisions of Laws 1925 Chapter 426 [§§53-1 to 53-52], the commission shall have the power to provide necessary office quarters, equipment, and supplies, and employ such assistants, clerks and other employees as may be necessary, provided that such assistants, clerks and other employees shall be employed and discharged only in accordance with Laws 1919, Chapter 192 as amended [§§4368, 4369]. All salaries and expenses shall be paid out of the funds of the commission as hereinafter provided. (Act Jan. 28, 1933, c. 7, §4.)

Athletic commission has no authority to borrow money. Op. Atty. Gen., Feb. 27, 1934.

Employees of State Athletic Commission are subject to state civil service act. Op. Atty. Gen. (596a), July 18, 1939.

**3260-5. Duties of Commission.**—The State Athletic Commission shall have charge and supervision of all boxing and sparring exhibitions held in the State of Minnesota and shall have power:

(1) To make and publish rules and regulations governing the conduct of boxing and sparring exhibitions and the time and place thereof.

(2) To issue licenses to individuals or organizations desiring to promote or conduct boxing or sparring exhibitions, and to suspend or revoke such licenses at its pleasure; every application for such license shall designate the territory in which the individual or organization intends to operate, and the license granted shall entitle the licensee to conduct such exhibitions in such territory and in no other. Provided that no person licensed to promote or conduct boxing or sparring exhibitions shall directly or indirectly engage in the managing of any boxer.

(3) To collect ten per cent (10%) of the gross receipts from admission to every boxing and sparring exhibition held within the state. All complimentary tickets presented at any entrance gate shall likewise be assessed for the tax herein provided, ten per cent of the value thereof. All moneys so collected shall be paid into the state treasury and are hereby appropriated for the purposes specified in this act. (Act Jan. 28, 1933, c. 7, §5.)

A village has no authority to pass ordinance requiring payment of license fee for boxing exhibition. Op. Atty. Gen., Apr. 17, 1933.

State Athletic Commission has supervision over boxing bouts in CCC camp and they are subject to state tax, though held on land leased by federal government. Op. Atty. Gen. (596b-6), Aug. 27, 1934.

**3260-6. All moneys to be paid into State Treasury.**—All moneys of the commission shall be paid into the state treasury and shall be disbursed by direction of the commission in the same manner as other state funds are disbursed, save as herein otherwise provided. The commission shall have no power to make any expenditures for any purpose except from the funds herein provided. The ten per cent collected by said commission, as provided in Section 5, Subdivision 3, except the tax on complimentary tickets, shall be paid to the State Board of Control, at such times as the state treasurer may direct. The moneys so paid shall be used for the purposes set forth in Laws 1913, Chapter 500, as amended, and for the additional purpose of paying to the state sanitarium, and to the counties maintaining and operating county tuberculosis sanitarium, state aid in addition to that authorized to be paid under the provision of such statute, under such rules and regulations as may be adopted by said State Board of Control. (Act Jan. 28, 1933, c. 7, §6.)

Ten per cent tax on boxing matches is to be paid into general fund along with other dedicated receipts. Op. Atty. Gen. (9a-10), May 31, 1939.

**3260-7. Licenses.**—Unless revoked by the commission, licenses granted hereunder shall authorize the individuals or organizations receiving the same to conduct boxing or sparring exhibitions in the community designated therein for the period of time designated therein, subject to the rules and regulations of the commission and to such restrictions as the commission may in its discretion incorporate therein. Each such license shall contain a restriction that no boxing or sparring exhibitions may be held on any Sunday or on Christmas or Good Friday and that no boxing or sparring match shall be of more than fifteen rounds of not to exceed three minutes each. (Act Jan. 28, 1933, c. 7, §7.)

**3260-8. Municipalities must consent to exhibitions.**—The provisions of this act are applicable to cities of the first class but no license shall be issued for the conducting of any boxing or sparring exhibitions within the limits of any municipality, except such cities of the first class, unless the governing body thereof has first consented to the holding of boxing or sparring exhibitions therein; in the event that the license is for the conducting of boxing or sparring exhibitions in any county outside the limits of a municipality, such license shall not be issued until the board of county commissioners of said county and also the governing body of the township shall have authorized the holding of boxing or sparring exhibitions in such community, and each such license shall designate the particular community in such county where such exhibitions are held. Such consent by the governing body of such municipality or by the county board or by the governing board of the township shall be evidenced by a certified copy of a resolution thereof filed with said commission. Such governing body may revoke such consent any time, and any licenses shall expire thirty days after resolution revoking consent has been filed with the commission. (Act Jan. 28, 1933, c. 7, §8.)

Supersedes §1186(12). Op. Atty. Gen., Apr. 17, 1933. Laws 1933, c. 7, §11, makes no exceptions, and the University of Minnesota, colleges and high schools of the state must pay the 10% of gross receipts of any amateur bout for which any charge is made. Op. Atty. Gen., Mar. 29, 1933.

An applicant for license to conduct local boxing matches may not include in his territory an area extending beyond the limits of a municipality which is included in such territory. Op. Atty. Gen., Apr. 1, 1933.

Local governing body may not require payment of reasonable license fee before giving its consent to the

holding of exhibitions under this law. Op. Atty. Gen., Apr. 17, 1933.

An applicant for license to conduct local boxing matches may not include territory beyond limits of municipality without also going before county commissioners and obtaining license for territory outside municipality. Op. Atty. Gen., Apr. 18, 1933.

A fee must be paid to conduct boxing matches outside limits of municipality where territory lies wholly outside. Id.

**3260-9. Number of licenses.**—Only one license shall be in force in any one municipality or community at any one time; provided however, that in municipalities whose population exceeds 150,000 persons the state athletic commission may issue one franchise for every 200,000 population or fraction thereof. (Act Jan. 28, 1933, c. 7, §9.)

**3260-10. License fees.**—The commission shall have authority to collect and require the payment of an annual license fee from the owners of franchises or licenses pursuant to the following schedule: Seven Hundred Fifty Dollars (\$750.00) in cities of the first class having a population in excess of 150,000 population; Five Hundred Dollars (\$500.00) in cities of the first class having a population of less than 150,000 population; One Hundred Fifty Dollars (\$150.00) in all municipalities, other than cities of the first class, having a population of more than 10,000 population; Seventy-five Dollars (\$75.00) in municipalities having a population of less than 10,000 and more than 5,000; Fifty Dollars (\$50.00) in municipalities having a population of less than 5,000 and more than 2,500; Twenty-five Dollars (\$25.00) in all municipalities of less than 2,500 population. The commission shall require the payment of said annual license fee at the time of the issuance of the license or franchise to the owner. The moneys so derived and the moneys derived from the tax on complimentary tickets shall be collected by the commission and paid to the State Treasurer and may be disbursed by the commission for the purpose of paying the expenses of the commission in the administration of the law herein provided for. The commission shall also have authority to license all boxers, managers, seconds and referees and may require them to pay an annual fee, not to exceed, however, the sum of \$10.00 per year. All moneys collected by said commission from such licenses shall be paid to the state treasurer and may be disbursed by the commission for the payment of expenses incurred by it. (Act Jan. 28, 1933, c. 7, §10.)

License fee may not be prorated. Op. Atty. Gen. (596b), Feb. 3, 1939.

**3260-11. Commission shall make rules and regulations.**—The commission shall make rules and regulations to govern the holding of amateur boxing exhibitions within the state, and such rules and regulations shall conform as nearly as practically can be to the rules and regulations prescribed by the American Amateur Athletic Association for the holding of amateur boxing and sparring exhibitions. The promoter or holder of any amateur bout for which any charge is made shall be liable to pay the ten per cent of gross receipts as hereinbefore provided. (Act Jan. 28, 1933, c. 7, §11.)

State Athletic Commission has supervision over boxing bouts in CCC camp and they are subject to state tax, though held on land leased by federal government. Op. Atty. Gen. (596b-6), Aug. 27, 1934.

License fees on amateur bouts are within jurisdiction of state athletic commission. Op. Atty. Gen. (596b-6), May 3, 1934.

**3260-12. Bonds.**—Before any license shall be granted to any person, club, corporation or organization to conduct, hold or give any boxing or sparring match or exhibition, such applicant therefor shall execute and file with the state auditor a bond in the sum of \$2,500.00 in cities of the first class and \$1,000.00 in other communities, to be approved as to form and sufficiency of the sureties thereof by the state auditor, conditioned for the payment of the ten per cent of the total gross receipts and license fees herein provided. Upon the filing and approval of

such bond the state auditor shall issue to such applicant for such license a certificate of such filing and approval which shall be by such applicant filed in the office of the commission with its application for such license; and no such license shall be issued until such certificate shall be so filed.

The secretary of the commission shall, before entering upon his duties, furnish a bond in the sum of not less than \$5,000.00, to be approved as to form and sufficiency of the sureties thereof, by the state auditor, conditioned upon the faithful performance of the duties of his office. (Act Jan. 28, 1933, c. 7, §12.)

**3260-13. Penalties for non-licensed exhibitions.**—Any person or persons who shall send or cause to be sent, published, or otherwise made known any challenge to fight what is commonly known as a prize fight, or shall engage in any public boxing or sparring match, exhibition, or contest, with or without gloves, for any prize, reward or compensation, or at which any admission fee is charged either directly or indirectly, or shall go into training preparatory for such fight, exhibition or contest, or shall act as a trainer, aider, abetter, backer, umpire, second surgeon, assistant or attendant at such fight, exhibition or contest, or in any preparation for the same, and any owner or lessee of any grounds, buildings, or structure of any kind permitting the same to be used for such fight, exhibition, or contest, shall be deemed guilty of a misdemeanor; provided that this section shall not apply to boxing or sparring exhibitions held or to be held under license issued by the state athletic commission and in compliance with the rules and regulations issued by it. (Act Jan. 28, 1933, c. 7, §13.)

Whether church can give boxing exhibition without paying license is dependent upon whether boxers received compensation and whether charge is made to see it. Op. Atty. Gen. (596b-3), June 24, 1936.

**3260-14. Commission to make report.**—The State Athletic Commission shall biennially make to the legislature a full report of its proceedings ending the first day of the preceding December and may submit with such report such recommendation pertaining to its affairs as it shall deem desirable; if at the time of the making of such biennial report by the commission, the moneys collected by the commission and

placed in the fund for the use of the commission and its expenses, shall exceed the sum of Two Thousand Dollars (\$2,000.00), all moneys in excess thereof shall be paid to the State Board of Control and used in accordance with the provisions of Section 6 of this act. (Act Jan. 28, 1933, c. 7, §14.)

**3260-15. Failure to report to commission.**—Whenever any individual or organization shall fail to make a report of receipts of any contest at the time prescribed by the State Athletic Commission or to pay the fee herein provided, or whenever such report is unsatisfactory to the state auditor, the state auditor may examine, or cause to be examined, the books and records of such individual or organization, and subpoena and examine under oath officers and other persons as witnesses for the purpose of determining the total amount of the gross receipts for any contest and the amount due pursuant to the provisions of this act, which amount he may, upon and as the result of such examination, fix and determine. In case of default in the payment of any amount so ascertained to be due, together with the expense incurred in making such examination, for a period of twenty days after notice to such delinquent individual or organization of the amount at which the same may be fixed by the state auditor, such delinquent shall, ipso facto, forfeit and shall be thereby disqualified from receiving any new license or any renewal of license; and shall in addition forfeit to the state of Minnesota the sum of Five Hundred Dollars (\$500.00), which may be recovered by the Attorney General in the name of the state of Minnesota in the same manner as other penalties are by law recovered. (Act Jan. 28, 1933, c. 7, §15.)

**3260-16. Acts repealed.**—Mason's Minnesota Statutes of 1927, Sections 3251 to 3260, inclusive, are hereby repealed. (Act Jan. 28, 1933, c. 7, §16.)

**3260-17. Acts repealed.**—Mason's Minnesota Statutes of 1927, Section 10286 so far as inconsistent with this Act is hereby repealed. (Act Jan. 28, 1933, c. 7, §17.)

**3260-18. Effective May 1, 1933.**—This act shall take effect and be in force from and after May 1, 1933. (Act Jan. 28, 1933, c. 7, §18.)

## CHAPTER 17

### Illegitimate Children—Bastards

#### 3261. Complaint—Where filed—Warrant.

At common law the father was not charged with the support of his illegitimate child, and the bastardy statute charges the father with the support of such child and furnishes the only remedy. 175M547, 221NW911.

Husband and wife are competent to give evidence that the former is not the father of a child of the wife conceived before the dissolution of the marriage by divorce. State v. Soyka, 181M533, 233NW300. See Dun. Dig. 10312.

Bastardy proceeding is civil in character rather than criminal. State v. Hanson, 187M235, 244NW809. See Dun. Dig. 827.

Bastardy proceedings are civil in nature rather than criminal. State v. Thompson, 193M364, 258NW527. See Dun. Dig. 827.

Bastardy proceeding is civil in essence, though presenting a criminal aspect in some of its forms. State v. Oslund, 199M604, 273NW76. See Dun. Dig. 827.

A filiation proceeding is, in substance, a civil action or proceeding governed in the main by rules of practice in civil cases. State v. Rudolph, 203M101, 280NW1. See Dun. Dig. 827.

District court of county where mother placed child to be cared for for a consideration had jurisdiction of proceedings, though mother had residence in another county, and court properly refused to give requested instruction concerning settlement under poor relief statutes. Id. See Dun. Dig. 833a.

Defendant in bastardy is entitled to change of venue, but mother may file complaint in any justice or municipal court in the state, and district court of county to which justice or municipal court binds defendant over

has jurisdiction to determine paternity, unless defendant moves for change of venue before trial. Id. See Dun. Dig. 833a, 10116, 10117, 10118.

An illegitimacy proceeding is civil in nature rather than criminal and state is not liable for costs to a defendant receiving a favorable verdict. Op. Atty. Gen. (199a-1), Oct. 9, 1935.

Extradition may not be secured on a charge of illegitimacy, but may be secured for absconding from the state with intent to evade proceedings to establish paternity. Op. Atty. Gen. (193b-20), Jan. 28, 1939.

Venue of paternity proceedings is set by statute, but act of absconding from state with intent to evade proceedings to establish paternity determines venue for prosecution of felony. Id.

If motion for change of venue is based solely on ground of residence of defendant in another county, and affidavit supporting motion does not negative nonresidence of woman and child in county where action is brought, court should properly deny motion. Op. Atty. Gen. (840c-5), May 8, 1939.

#### 3262. Action, how entered—Proceedings.

A bastardy proceeding is a civil proceeding, not a criminal action, and defendant may be called by prosecution for cross-examination. State v. Jeffrey, 188M476, 247NW692. See Dun. Dig. 827(76).

#### 3265. Trial—Exclusion of public, etc.

State v. Strong, 192M420, 256NW900; note under §3268. Verdict in bastardy case held not sustained by evidence. 173M294, 217NW118.