

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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able length of time; and any operator or owner of such honey house or building, failing to obey such notice and warning, shall be guilty of a misdemeanor and shall be punished as provided in this Act. (As amended Apr. 22, 1939, c. 404, §15.)

5473-16. May not spray fruit trees with poisonous material.—It shall be unlawful to spray or dust fruit trees which are in full bloom with any poisonous material which is injurious to bees in their eggs, larval or adult stages. (As amended Apr. 22, 1939, c. 404, §16.)

5473-17. Violations—Penalties.—Any person violating any of the provisions of this Act shall be punished by a fine of not more than \$500.00, or by imprisonment in the county jail not exceeding one year, or both such fine and imprisonment in the discretion of the court.

In addition to the penalties herein provided, bees on combs, used hives or other used apiary appliances

brought into this state in violation of the provisions of this Act shall be confiscated and destroyed. (As amended Apr. 22, 1939, c. 404, §17.)

5473-18. Provisions severable.—If any clause, sentence, paragraph, or part of this Act shall for any reason be adjudged or decreed invalid by any court of competent jurisdiction, such judgment or decree shall not affect, impair, or invalidate the remainder of said Act, but shall be confined in its operation to the clause, sentence, paragraph, or part thereof directly involved in the controversy in which said judgment or decree shall have been rendered. (As amended Apr. 22, 1939, c. 404, §18.)

5473-19. Laws repealed.—That Mason's Minnesota Statutes of 1927, Sections 5461, 5462, 5463, 5464, 5465, 5466, 5467, 5468, 5469, 5470, 5471, 5472 and 5473 are hereby repealed. (As amended Apr. 22, 1939, c. 404, §19.)

CHAPTER 31

Inspection of Steam Vessels and Boilers

5474. District boiler inspector—Appointment, etc.

District boiler inspector from 1905 to 1919 was a state employee. Op. Atty. Gen., Oct. 16, 1933.

State boiler inspector has authority to inspect air pressure vessels on trolley cars in connection with their brakes. Op. Atty. Gen. (34g-12), July 13, 1934.

Boats propelled by gasoline or steam on Lake Mille Lacs and charged an inspection fee therefor are also required to procure a license from commission set up under Laws 1937, Ex. Sess., c. 80, if they are within the provisions of §4 thereof. Op. Atty. Gen. (34g-2), Feb. 9, 1938.

Municipality has no authority by ordinance to prohibit or prevent an engineer licensed under state law from repairing, altering or servicing steam, water or gas pipes of a steam plant confined within buildings or premises where engineer is employed. Op. Atty. Gen., (34f), June 14, 1938.

Boilers located in armories are subject to inspection. Op. Atty. Gen. (34g-14), March 4, 1939.

Provision specifying a two-year term for district boiler inspectors was impliedly repealed by the Civil Service Act. Op. Atty. Gen. (644), May 23, 1939.

District boiler inspectors are within the classified civil service. Id.

5475. Who eligible.

A janitor of a school may also be employed as a state boiler inspector. Op. Atty. Gen., Aug. 18, 1931.

5476. Deputy inspectors.

Op. Atty. Gen., Aug. 18, 1931; note under §5475.

5480. Examinations of master and pilots, etc.

Operator of gasoline launch on inland water must obtain permit from State boiler inspector and conservation commission in certain cases. Op. Atty. Gen., Mar. 21, 1934.

A village has no authority to regulate the operation of boating, bathing, etc., in a public lake. Op. Atty. Gen. (273d-1), Aug. 25, 1934.

A rowboat and outboard motor rented to a resort patron is subject to inspection if a fishing guide is furnished to run the outfit. Op. Atty. Gen. (34g-2), Sept. 3, 1937.

5481. Inspection.

Minnesota general hospital should not discriminate against indigent patients. Op. Atty. Gen. (1001c), June 23, 1937.

5486. Allowance of and aiding inspection—License—Offense—Prosecution.—Every owner or manager of a steam boiler shall allow inspectors full access to the same, and every engineer operating the same shall assist the inspector in his examination, and point out any known defects in the boilers or machinery in his charge. No person shall be entrusted with the operation of any steam boiler or steam machinery who has not received a license of such grade as to cover said steam boilers or steam machinery, which license shall be renewed annually. Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. It shall be the duty of the inspector in the county where any

such offense was committed to file a complaint in court for the prosecution of the offender. (As amended Apr. 22, 1939, c. 399.)

Op. Atty. Gen., Jan. 14, 1935; note under §5487(1). Operator of steam boiler in state testing mill must have license. Op. Atty. Gen. (34f), Nov. 18, 1936.

5487. Examinations for classifications and qualifications.

Engineer's license must cover total horse power of any boiler or boilers connected to the header of each boiler plant. Op. Atty. Gen. (34h), Oct. 31, 1938.

"Horse power" is intended to mean manufacturer's rating. Id.

There are no restrictions as to amount of horse power chief engineer may operate. Id.

Minimum grade license of shift engineer may not be less than one grade below license of engineer in charge. Op. Atty. Gen. (34f), May 16, 1939.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

(1). It is not necessary in a boiler plant of more than 300 horsepower which requires a chief engineer in charge, in case of changing shifts, that all engineers on various shifts should have a license as chief engineer, it being the intent of the statute that one person be in charge and responsible at all times and that his work might be done for him by a first class engineer in his absence between shifts. Op. Atty. Gen. (34h), Jan. 14, 1935.

5490. District boiler inspector to deliver certificates—fees for inspection.—After examination and tests, if the district boiler inspector shall find any steam boiler or pressure vessel safe and suitable for use, he shall deliver to the chief boiler inspector a verified certificate in such form as the chief boiler inspector shall prescribe, containing a specification of the tests applied and the working pressure allowed, a copy of which the district boiler inspector shall furnish to the owner of the boiler or pressure vessel, who shall post and keep the same in a conspicuous place on or near such boiler or pressure vessel. The district boiler inspector shall be entitled to a fee of \$3.00 for the inspection of each boiler or pressure vessel and its connections, payable on delivery of the certificate; provided that the fee for inspection of tanks or receptacles containing air under pressure used to inflate rubber tires used on vehicles shall be \$1.00. The fee for the examination for an engineer's license shall be: Chief engineer, \$7.00; first-class, \$5.00; second-class, \$3.00, and special, \$2.00; and for each yearly renewal, \$1.00. 50 per cent of all license fees shall go to create a fund to be known as the boiler inspectors' fund and 50 per cent to the inspector of the district where the examination is held or renewal made. Which fee shall accompany the application. (R. L.

'05, §2184; G. S. '13, §4753; '19, c. 240, §5; Apr. 15, 1933, c. 257.)

Op. Atty. Gen. (34g-12), July 13, 1934; note under §5474.

Laws 1933, c. 257, amending this section, applies to inspection of air pressure vessels. Op. Atty. Gen., May 2, 1933.

If air tanks are used to inflate tires and also used for other purposes by other connections, boiler inspector is entitled to three-dollar fee. Op. Atty. Gen., Aug. 1, 1933.

Inspection fee is \$3 and not \$1 for inspection of receptacle containing air used to inflate rubber tires on vehicles "and also used for other purposes." Op. Atty. Gen., Jan. 17, 1934.

5492. Residence boilers and railroad locomotives excepted.

Operator of steam boiler in state testing mill must have license. Op. Atty. Gen. (34f), Nov. 18, 1933.

DECISIONS RELATING TO VESSELS IN GENERAL

The court's charge that the defendant was not responsible for the arrival of the corn at Buffalo in a damaged condition, unless its negligence caused the damage, was sufficient to relieve defendant of responsibility for damage due to the propensity of the corn to sweat and heat, if the sweating and heating occurred without negligence on its part. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 732(14), 9002.

Unseaworthiness is not confined to faults, or omissions in the construction of the vessel, but may arise out of a fault in the conduct of defendant in relation to the

vessel and its equipment, including proper manipulation of hatches to afford ventilation. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 9002.

The damage to plaintiff's property occurred prior to the commencement of the voyage, and the Harter Act (Mason's USCA, Tit. 46, §§190-195), did not apply or relieve defendant of liability. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 9002.

It was defendant's duty as bailee to exercise reasonable care to ascertain the characteristics of the cargo it proposed to store and transport. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 732(10).

In every contract of affreightment by water, unless otherwise expressed, there is an implied warranty of the seaworthiness of the ship, not only of reasonable fitness to meet the ordinary perils of the sea, but seaworthiness as respects the particular cargo to be transported, including stowage as respects seaworthiness in regard to the cargo. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 9002.

The burden of proof was upon the bailee to show itself free from negligence causing damage to a cargo of corn which it stored for the winter in its ship at Milwaukee and transported to Buffalo upon the opening of navigation. *Rustad v. Great Northern Ry. Co.*, 122M453-456, 142NW727, followed and applied. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 732(14), 9002.

Evidence held to sustain finding that negligence of steamship company in ventilation and stowage of corn and its failure to remove snow from deck caused damage to cargo. *Cargill Grain Co. v. C.*, 182M516, 235NW268. See Dun. Dig. 732(14), 9002.

CHAPTER 31A

Inspection and Regulation of Aircraft

UNIFORM STATE LAW FOR AERONAUTICS

5494-7. Definitions.—In this act "Aircraft" includes balloon, airplane, hydroplane, and every other vehicle used for navigation through the air. A hydroplane, while at rest on water and while being operated on or immediately above water, shall be governed by the rules regarding water navigation; while being operated through the air otherwise than immediately above water, it shall be treated as an aircraft.

"Aeronaut" includes aviator, pilot, balloonist, and every other person having any part in the operation of aircraft while in flight.

"Passenger" includes any person riding in an aircraft but having no part in its operation. (Act Apr. 17, 1929, c. 219, §1.)

5494-8. Sovereignty of air in state.—Sovereignty in the space above the lands and waters of this state is declared to rest in the state, except where granted to and assumed by the United States pursuant to a constitutional grant from the people of this state. (Act Apr. 17, 1929, c. 219, §2.)

Flight by aircraft as constituting trespass or nuisance. 15MinnLawRev318.

Flight by aircraft as constituting trespass or nuisance, and property rights in air column. 21MinnLawRev572. Trespassers in the sky. 21MinnLawRev773.

5494-9. Air rights of surface owner.—The ownership of the space above the lands and waters of this state is declared to be vested in the several owners of the surface beneath, subject to the right of flight described in Section 4 [§5494-10]. (Act Apr. 17, 1929, c. 219, §3.)

5494-10. Regulation of flight of aircraft.—Flight in aircraft over the lands and waters of this state is lawful, unless at such low altituded as to interfere with the then existing use to which the land or water, or the space over the land or water, is put by the owner, or unless so conducted as to be imminently dangerous or damaging to persons or property lawfully on the land or water beneath. The landing of an aircraft on the lands or waters of another, without his consent, is unlawful, except in the case of a forced landing. For damages caused by a forced landing, however, the owner or lessee of the aircraft

or the aeronaut shall be liable as provided in Section 5 [§5494-11]. (Act Apr. 17, 1929, c. 219, §4.)

5494-11. Owners of aircraft liable for injuries.—The owner of every aircraft which is operated over the lands or waters of this state is absolutely liable for injuries or damage to persons or property on the land or water beneath, caused by the ascent, descent, or flight of the aircraft, or the dropping or falling of any object therefrom, whether such owner was negligent or not, unless the injury or damage is caused in whole or in part by the negligence of the person injured, or of the owner or bailee of the property damaged. If the aircraft is leased at the time of the injury or damage to person or property, both the owner and lessee shall be liable, and they may be sued, jointly, or either or both of them may be sued separately. An aeronaut who is not the owner or lessee shall be liable only for the consequences of his own negligence. The injured person, or owner or bailee of the damaged property, shall have a lien on the aircraft causing the injury or damage to the extent of such injury or damage caused by the aircraft or objects falling from it. (Act Apr. 17, 1929, c. 219, §5.)

Record held not to disclose a contract between plaintiff and defendant for special charter of an airplane, and in consequence there may be no recovery for injuries received in emergency landing made by a plane owned and operated by another company, in which plaintiff undertook the flight. *Roberts v. N.*, 201M89, 275NW410.

5494-12. State law to govern as to crimes, etc., in aircraft.—The liability of the owner of one aircraft, to the owner of another aircraft, or to aeronauts or passengers on either aircraft, for damage caused by collision on land or in the air shall be determined by the rules of law applicable to torts on land. (Act Apr. 17, 1929, c. 219, §6.)

Liability of owner of aeroplane for injuries to passengers. 16MinnLawRev580.

5494-13. Same—law governing.—All crimes, torts, and other wrongs committed by or against an aeronaut or passenger while in flight over this state shall be governed by the laws of this state; and the question whether damage occasioned by or to an aircraft while in flight over this state constitutes a tort, crime or other wrong by or against the owner of such air-