

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.



Edited by  
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*Assisted by*  
**The Publisher's Editorial Staff**

MASON PUBLISHING CO.  
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**5680-2. To be sold at cost.**—Said book shall be offered for sale at a price sufficient to defray the cost of printing, publishing and distribution. (Apr. 24, 1937, c. 396, §2.)

**5680-3. Dairy slogans to be printed.**—On all printed matter hereafter printed, used, and distributed by the State of Minnesota and all departments and officials thereof there shall be printed thereon wherever practical, in as conspicuous a place, and in as prominent a type as may be consonant with good taste, the following words or slogan:

“DRINK MORE MILK  
EAT MORE BUTTER  
FOR YOUR HEALTH AND PROSPERITY”

(Act Feb. 24, 1939, c. 29, §1.)

Slogan should not be printed on medical forms printed and used only within institutions in keeping of medical records, such as temperature sheets, nurses' notes, etc. Op. Atty. Gen. (340a), May 23, 1939.

**5680-4. Definitions.**—The term, printed matter, as herein used, shall include all letterheads, vouchers, motor vehicle application blanks, income tax blanks, all circulars, pamphlets, booklets, reports, literature and other like printed material used by the State of Minnesota and all departments and officials thereof. (Act Feb. 24, 1939, c. 29, §2.)

**5680-5. State printer to designate where.**—It shall be within the direction of the state expert printer, after consultation with the appropriate department heads, to determine upon what printed matter, as herein defined, it is reasonably and practicably possible to print said slogan and shall be the duty of said state expert printer to carry out the provisions of this law. (Act Feb. 24, 1939, c. 29, §3.)

**5681. Publication of session laws.**

Contract for printing regular session is not continuous for special session following, and state printer may advertise for bids for special session. Op. Atty. Gen. Nov. 25, 1933.

## CHAPTER 35

### Employments Licensed by State Boards or Officials

#### ATTORNEYS AT LAW

**5685. Board of law examiners—Examinations.**

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

Where attorney accused of misconduct purposely absents himself at hearing before referee so as to prevent prosecutor of charges from calling him for cross-examination under statute, court will assume that those who secured personal injury cases for him were authorized by him to do what was done to secure them. McDonald, 204M61, 232NW677. See Dun. Dig. 680.

**5686-1. Admission of attorneys to practice in certain cases.**—Any adult resident of the State of Minnesota, who has completed the prescribed course of study for admission to the practice of law in any state of the United States where said prescribed course of study is for a period of not less than three years, and who has duly examined as to his qualifications by the law examining body of said state and admitted to the practice of law therein, and who has served as an official court reporter in the State of Minnesota for not less than five years immediately following said examination under appointment of a district judge of this state, and who is recommended for his character, ability and learning by said judge, shall upon furnishing proof of the foregoing facts and payment of the usual fee be on motion before the supreme court of this state admitted within six months after the passage of this act to practice law in all of the courts of this state without examination. (Act Apr. 20, 1929, c. 267.)

This act in invalid. 178M335, 227NW180.

**5686-2. Admission to practice at law of certain persons.**—Any person who has studied law in the office of a practicing attorney of this State for a period of at least three years in compliance with the rules of the State Board of Bar Examiners in force at the time of such study and who has been a student in the Academic College of the University of Minnesota for a period of more than one year and who has served in the military or naval forces of the United States during the World War and received an honorable discharge therefrom and who was disabled therein or thereby within the purview of the Act of Congress approved June 7th, 1924, known as "World War Veteran's Act, 1924" and whose disability is rated at least ten per cent thereunder at the time of the passage of this act, shall on motion before the Supreme Court upon proof of such facts and that he is an adult resident of the State of Minnesota of good moral character, recommended by two district judges of this State, be admitted to practice law without examina-

tion upon payment of the usual fee for such examination. (Act Apr. 27, 1929, c. 424, §1.)

Laws 1929, c. 424, admitting certain disabled veterans and court reporters to practice of law, violate the equality provisions of the constitution. 178M331, 227NW179; 178M335, 227NW180.

An agreement to pay an attorney to act as vice president of a bank on a salary, the fees of the attorney to be assets of the bank, held invalid as in effect a practice of law by the bank, a corporation having no authority to practice law. 181M254, 232NW318. See Dun. Dig. 676.

Foreclosure of mortgages by advertisement, where an attorney's fee is charged, and the conducting of proceedings in the probate court in the matter of estates and guardianships, held "practice of law." 181M254, 232NW318. See Dun. Dig. 676.

**5687. Unauthorized practice. [Repealed].**

Repealed. Laws 1931, c. 114, post, §5687-2.

Persons who engage in business of adjusting and settling claims for personal injuries and determine legal rights of injured person are guilty of practicing law. Fitchette v. T., 191M582, 254NW910. See Dun. Dig. 676.

One practicing law after being disbarred was sentenced to thirty days in jail for contempt. State Board of Law Examiners v. N., 203M598, 280NW5. See Dun. Dig. 1703.

**5687-1. Unauthorized practice of law—penalty.**—

(a) It shall be unlawful for any person or association of persons, except members of the Bar of Minnesota admitted and licensed to practice as attorneys at law, to appear as attorney or counsellor at law in any action or proceeding in any court in this state to maintain, conduct or defend the same, except in his own behalf as a party thereto in other than a representative capacity, or, by word, sign, letter, or advertisement, to hold out himself or themselves as competent or qualified to give legal advice or counsel or to prepare legal documents, or as being engaged in advising or counseling in law or acting as attorney or counsellor at law, or in furnishing to others the services of a lawyer or lawyers, or, for a fee or any consideration, to give legal advice or counsel, perform for or furnish to another legal services, or, for or without a fee or any consideration, to prepare (directly or through another) for another person, firm or corporation, any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or, for a fee or any consideration, to prepare for another person, firm or corporation, any other legal document, except as provided in subdivision (c) below.

(b) No corporation, organized for pecuniary profit by or through its officers or employees or anyone else, shall maintain, conduct or defend (except in its own behalf when a party litigant) any action or proceeding in any court in this state; or shall, by or through its

officers or employees or anyone else, give or assume to give legal advice or counsel or perform for or furnish to another person or corporation legal services; or shall, by word, sign, letter or advertisement, solicit the public or any person to permit it to prepare or cause to be prepared any will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or hold itself out as desiring or willing to prepare any such document, or to give legal advice or legal services relating thereto or to give general legal advice or counsel, or to act as attorney at law or as supplying or being in a position to supply the services of a lawyer or lawyers; or shall to any extent engage in or hold itself out as being engaged in the business of supplying services of a lawyer or lawyers; or shall cause to be prepared any person's will or testamentary disposition or instrument of trust serving purposes similar to those of a will, or any other legal document for another person, firm or corporation, and receive, directly or indirectly, all or a part of the charges for such preparation or any benefits therefrom; or shall itself prepare, directly or through another, any such document for another person, firm or corporation, except as provided in (c) below.

[(c)] The foregoing shall not prohibit anyone from drawing, without charge for so doing, any document to which he, or a person whose employee he is or a firm whereof he is a member or a corporation whose officer or employee he is, a party, except another's will or testamentary disposition or instrument of trust serving purposes similar to those of a will; and shall not prohibit a person from drawing a will for another in an emergency wherein the imminence of death leaves insufficient time to have the same drawn and its execution supervised by a licensed attorney at law; and shall not prohibit anyone, acting as broker for the parties or agent of one of the parties to a sale or trade or lease of property or to a loan, from drawing or assisting in drawing, with or without charge therefor, such papers as may be incident to such sale, trade, lease, or loan; and shall not prohibit any insurance company from causing to be defended, or from offering to cause to be defended through lawyers of its selection, the insureds in policies issued or to be issued by it, in accordance with the terms of such policies; and shall not prohibit one such licensed attorney at law from acting for several common-carrier corporations or any of its subsidiaries pursuant to arrangement between said corporations; and shall not prohibit any bona fide labor organization from giving legal advice to its members in matters arising out of their employment; and shall not prohibit any person from conferring or cooperating with a licensed attorney at law of another in preparing any legal document, if such attorney is not directly or indirectly in the employ of such person or of any person, firm or corporation represented by such person; and shall not prohibit any licensed attorney at law of Minnesota, who is an officer or employee of a corporation, from drawing, for or without compensation, any document to which the corporation is a party or wherein it is interested personally or in a representative capacity (except wills or testamentary dispositions or instruments of trust serving purposes similar to those of a will), but any charge made for the legal work connected with preparing and drawing such document shall not exceed the amount paid to and received and retained by such attorney, and such attorney shall not directly or indirectly rebate the same to or divide the same with such corporations; and shall not prohibit any person or corporation from drawing, for or without a fee, farm or house leases, notes, mortgages, chattel mortgages, bills of sale, deeds, assignments, satisfactions or any other conveyances except testamentary dispositions and instruments of trust; and shall not prohibit a licensed attorney at law of Minnesota from

rendering to a corporation legal services to itself at the expense of one or more of its bona fide principal stockholders by whom he is employed and by whom no compensation is directly or indirectly received for said services, and shall not prohibit any person or corporation engaged in the business of making collections from engaging or turning over to an attorney at law for the purpose of instituting and conducting suit or making proof of claim of a creditor in any case in which the attorney at law receives the entire compensation for such work, and shall not prohibit any regularly established farm journal or newspaper, devoted to general news, from publishing a department of legal questions and answers thereto, made by a licensed attorney at law, if no such answer be accompanied or at any time preceded or followed by any charge for such answer, any disclosure of any name of the maker of any answer, any recommendation of or reference to anyone to furnish legal advice or services, or by any legal advice or service for such periodical or any one connected with it or suggested by it, directly or indirectly.

(d) It shall be unlawful to exact, charge or receive any attorney's fee for the foreclosure of any mortgage, unless the foreclosure is conducted by a licensed attorney at law of Minnesota and unless the full amount charged as attorney's fee is actually paid to and received and retained by such attorney, without being directly or indirectly shared with or rebated to anyone else, and it shall be unlawful for any such attorney to make any showing that he has received such a fee unless he has received the same or to share with or rebate to any other person, firm or corporation such fee or any part thereof received by him; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business and not an officer or employee of the foreclosing party, if such attorney has assisted in performing the services for which the fee is paid, or resides in a place other than that where the foreclosure proceedings are conducted and has forwarded the case to the attorney conducting such foreclosure.

It shall be unlawful for any corporation, appearing as executor, administrator, guardian, trustee or other representative, to do the legal work in any action, probate proceeding or other proceeding in any court in this state, except through a licensed attorney at law of Minnesota maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee or representative. No attorney's fee shall be charged or paid or received in any such case, unless actually paid to and received and retained by such an attorney at law maintaining his own place of business and not an officer or employee of such executor, administrator, guardian, trustee or representative; and it shall be unlawful for such attorney to represent in any manner that he has received any sum as a fee or compensation unless the same has been actually received by him, or directly or indirectly to divide with or rebate to any person, firm or corporation any part of any such fee or consideration received by him in any such case; but such attorney may divide such fee with another licensed attorney at law maintaining his own place of business, and not an officer or employee of such executor, administrator, guardian, trustee or other representative, if such attorney has assisted in performing the services for which the fees are paid, or resides in a place other than that where the action or proceedings are conducted and has forwarded the case to the attorney conducting the action or proceedings.

(e) Any person or corporation or officer or employee thereof violating any of the foregoing provisions shall be deemed guilty of a misdemeanor, and

upon conviction thereof shall be punished as by statute provided for the punishment of misdemeanors. It shall be the duty of the respective county attorneys in this state to prosecute violations of this act, and the district courts of this state shall have sole original jurisdiction of any such offense under this act.

In lieu of criminal prosecution above provided for, such County Attorney or the Attorney General may, in the name of the State of Minnesota, or in the name of the State Board of Law Examiners, proceed by injunction suit against any violator of any of the provisions above set forth to enjoin the doing of any act or acts violating any of said provisions.

(f) Any attorney or counsellor at law residing in any other state or territory wherein he has been admitted to practice law, who shall attend any term of the supreme or district courts of this state for the purpose of trying or participating in the trial or proceedings of any action or proceedings there pending may, in the discretion of the court before whom he appears in such action or proceeding, be permitted to try, or participate in the trial or proceedings in, such action or proceeding, without being subject to the provisions of this act, other than those set forth in sub-division (b) above.

(g) Any person who prior to the passage of this act has served eight years or more as Judge of any Municipal Court in this State, and who for twenty years or more, prior to the passage of this act, has performed legal services in the Probate Courts of this state for himself, while acting as administrator, executor or guardian, shall be permitted to practice in any Municipal Court of this state, and also to perform necessary legal services in any Probate Court of this state for himself while acting as administrator, executor or guardian.

(h) Nothing herein contained shall be construed to prevent a corporation from furnishing to any person lawfully engaged in the practice of law, such information or such clerical service in and about his professional work as, except for the provisions of this section, may be lawful, provided that at all times the lawyer receiving such information or such services shall maintain full, professional and direct responsibility to his clients for the information and services so received. (Act Apr. 4, 1931, c. 114, §1.)

The letter (c), enclosed in brackets, was omitted from the session laws.

Bidding at a foreclosure sale is not practice of law, and so function may properly be delegated to one not an attorney at law. *Klotz v. J.*, 201M355, 276NW244. See Dun. Dig. 664.

In action by law school graduate who had not been admitted to the bar against attorney for services rendered in preparation of a case for trial, evidence held to sustain finding that defendant did not employ plaintiff in reliance upon any misrepresentation of status as an attorney. *Costello v. E.*, 202M656, 278NW580. See Dun. Dig. 700.

In a criminal prosecution before a justice of the peace or in municipal court in a misdemeanor case, a forest ranger or patrolman may assist in presenting the evidence in behalf of the state by examination of the witnesses. *Op. Atty. Gen.*, May 27, 1931.

Home owners' protective bureau soliciting cases of persons desiring to obtain benefit of mortgage moratorium law is guilty of a crime. *Op. Atty. Gen.*, Aug. 22, 1933.

Justice of the peace engaged in business of collection of bills is not engaged in practice of law. *Op. Atty. Gen.* (266a-3), Aug. 10, 1933.

Any person appearing before industrial commission in behalf of or representing any insurance company, employer or employee or others in any matter relating to enforcement of Workmen's Compensation Act, is practicing law. *Op. Atty. Gen.* (851J), May 2, 1933.

Contracts to furnish attorneys to motorists in actions arising from operation of automobile. 15MinnLawRev 351.

Radio broadcasts of legal advice as unlawful practice. 22MinnLawRev876.

**5687-2. Law repealed.**—Section 5687, General Statutes 1923, is hereby repealed. (Act Apr. 4, 1931, c. 114, §2.)

**5687-3. Provision separable.**—In case any section, subdivision, paragraph or sentence of this act is de-

clared unconstitutional, that shall not affect the validity of the rest of this act. (Act Apr. 4, 1931, c. 114, §3.)

**5687-4. Effective July 1, 1931.**—This act shall take effect and be in force from and after July 1, 1931, but shall not affect any action or proceeding now pending in any court. (Act Apr. 4, 1931, c. 114, §4.)

**5687-5. Attorneys shall not employ solicitors.**—No attorney-at-law shall, through any runner, agent or person not an attorney-at-law who is employed by him, solicit a person to employ such attorney to present a claim for damages for personal injuries or for death, or to prosecute an action to enforce such a claim, and no attorney-at-law shall directly or indirectly give or promise to any such person other than an attorney-at-law any money, fee or commission in consideration of the employment of such attorney by a person having a claim for personal injuries or for death, or soliciting or procuring such person who has such claim to employ such attorney to present such claim or to prosecute an action for the enforcement thereof. (Act Apr. 23, 1929, c. 289, §1.)

Attorney employing other attorneys to solicit personal injury actions was guilty of unethical and unprofessional conduct. *Greathouse*, 139M51, 248NW735. See Dun. Dig. 678.

**5687-6. Soliciting of business by persons other than attorneys unlawful.**—It shall be unlawful for any person not an attorney-at-law to solicit for money, fee or commission, in any manner whatsoever, any demand or claim for personal injuries or for death for the purpose of having an action brought thereon for the purpose of settling the same. Nothing in this act shall be construed to prevent any bona fide labor organization or any member thereof from advising or securing advice for any member of such organization in regard to his rights. (Act Apr. 23, 1929, c. 289, §2.)

**5687-7. Violation a misdemeanor.**—(a) Any attorney-at-law who shall violate Section 1 hereof shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50, nor more than \$100, or imprisonment in the county jail for not more than 90 days.

(b) Any person who shall violate Section 2 [5687-6] hereof shall be guilty of a misdemeanor and shall be punished by a fine of not less than \$50, nor more than \$100, or by imprisonment in the county jail for not to exceed 90 days. (Act Apr. 23, 1929, c. 289, §3.)

**5687-8. Certain statements shall be presumed to be fraudulent.**—(a) Any statement secured from an injured person at any time within 30 days after such injuries were sustained shall be presumably fraudulent for use in the trial of any action for damages for injuries sustained by such person or for the death of such person. (Act Apr. 23, 1929, c. 289, §4.)

Statute creates assumption only, and it does not remain to create an issue of fact as against undisputed credible evidence in opposition thereto. *Cosgrove v. M.*, 196M6, 264NW134. See Dun. Dig. 8374.

Presumption created disappears completely immediately evidence demonstrates that there is nothing fraudulent about statements obtained. *Swanson v. S.*, 196M298, 265NW39. See Dun. Dig. 8374.

Where counsel for plaintiff persisted in treating statements procured by defendant's counsel from plaintiff and a witness as having been improperly if not fraudulently procured, although such statements were then demonstrably free from impropriety or fraud, case being close on merits and it being difficult to see how verdict can be sustained, misconduct of counsel held to require a new trial. *Id.*

Court in its instruction properly applied this section to a statement obtained from plaintiff fourth day after accident. *Vondrashek v. D.*, 200M530, 274NW609. See Dun. Dig. 3409.

Statute does not render statement inadmissible as evidence. *Lestic v. K.*, 204M125, 283NW122. See Dun. Dig. 3409, 8374.

There is no law regarding statements taken from witnesses to accidents. *Op. Atty. Gen.*, Feb. 15, 1933.

**5687-9.** This act shall take effect and be in force from and after December 31, 1929. (Act Apr. 23, 1929, c. 289, §5.)

**5688. General duties.**

Fact that defendant attorney had contracts with his clients for contingent fees did not render his contract with plaintiff investigator champertous or illegal. 171 M384, 214NW276.

Attorney could not recover for legal services where there was no express contract therefor, nor a contract to be implied from the facts. 176M498, 223NW786.

Attorney guilty of fraud and bad faith toward his client is not entitled to compensation. 180M493, 231NW 410.

Though an attorney may be guilty of misconduct in establishing his case by his own testimony, such testimony is competent. 181M45, 231NW414.

A contract between lawyers having claims against embarrassed corporations to share the fees which one should receive as attorney for the receiver of such corporations is against public policy, where the purpose of the arrangement was to throw such corporations into the hands of a receiver and profit by the fees allowed the receiver and his attorney. *Anderson v. G.*, 183M472, 237 NW9. See Dun. Dig. 1870, 1871.

In action between attorneys growing out of alleged secret profits, finding of settlement and accounting held sustained by evidence. *Diesen v. C.*, 184M400, 238NW785. See Dun. Dig. 698a.

An attorney cannot, with propriety, advertise his talent, skill and ability. *Greathouse*, 189M51, 248NW735.

An attorney is not an officer of the state in a constitutional or statutory sense, but is an officer of the court exercising a privilege during good behavior. *Greathouse*, 189M51, 248NW735. See Dun. Dig. 664.

Evidence held insufficient to show employment of attorney in action for expenses and for special services. *O'Brien v. B.*, 195M522, 263NW546. See Dun. Dig. 668.

Attorney should avoid testifying in behalf of client. *Ferraro v. T.*, 197M5, 265NW829. See Dun. Dig. 10306a.

That a witness is also counsel for one of parties does not make his testimony inadmissible, though that situation should be avoided when it is possible to do so without injury to party's cause. *McKercher v. V.*, 199M263, 271NW489. See Dun. Dig. 10306a.

It is duty of court to declare void any contract to corrupt or improperly influence any public servant, but before applying such remedy, and permitting one who has received a valuable consideration for a promise fair upon its face to escape its performance by pleading invalidity of his own agreement, such fatal defect therein must clearly appear. *Hollister v. U.*, 199M269, 271NW493. See Dun. Dig. 1875.

An uneducated investor had right to repose confidence in a lawyer having reputation for ability and integrity, as affecting conspiracy and fraud in purchase and sale of stock of a corporation of which lawyer was president. *Scheele v. U.*, 200M554, 274NW673.

County attorney cannot charge for his services in suing on bonds in bastardy proceedings. *Op. Atty. Gen.* (121b-11), May 31, 1935.

After a defendant in jail has employed counsel, it is unethical for county attorney or sheriff or deputies to try to obtain a statement from the defendant in absence of his attorney. *Op. Atty. Gen.* (121b-7), Mar. 1, 1937.

**Subd. 5—**Volunteering information on the witness stand. 171M492, 214NW666.

**5689. Penalties for deceit, etc.**

This section trebles damages in actions therein referred to, but does not create any new cause of action. 181M322, 233NW515. See Dun. Dig. 674.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

**5690. Authority.**

Knowledge of a written assignment of a contract for deed by the vendee cannot be imputed to the vendors from the fact that their attorney drew the assignment. 175M502, 221NW871.

Fact that contract with plaintiff's attorneys is champertous and void, or that the attorneys have been guilty of unprofessional conduct, is not ground for dismissing the action. 177M1, 223NW291.

Sole heir having ratified settlement of claim, authority of attorney representing him cannot be questioned. *Parker's Estate*, 178M409, 227NW426.

On summary proceedings, held that court properly refused to require attorney to repay fees when discharged. *Seibert v. S.*, 186M274, 243NW59. See Dun. Dig. 666.

Parties are bound by stipulation as to amount of liability if any liability exists. *Collins v. M.*, 187M514, 246NW6. See Dun. Dig. 9004.

An attorney engaged merely to make a collection has no implied authority to indorse for his client a check received in payment of the claim, in absence of exceptional circumstances. *Rosacker v. C.*, 191M553, 254NW 824. See Dun. Dig. 689.

While attorney was acting as a collector for mortgagor, his failure to collect and pay mortgagee was not chargeable to mortgagee, though such attorney subsequently represented mortgagee in foreclosure of mortgage, as

affecting wrongfulness of foreclosure. *Hayward Farms Co. v. U.*, 194M473, 260NW868. See Dun. Dig. 689.

A stipulation in open court eliminating issue of whether plaintiff was an employee of defendant company, and consequently subject to workmen's compensation act left case where court properly submitted it on question whether plaintiff was an invitee and entitled to ordinary care for his safety. *Anderson v. H.*, 198M509, 270NW146. See Dun. Dig. 9004.

Client accepting benefits of attorney's agreement or stipulation may not deny his authority to make agreement. *Schaefer v. T.*, 199M610, 273NW190. See Dun. Dig. 693.

Parties may limit questions involved by stipulation. *Olson v. G.*, 203M267, 281NW43. See Dun. Dig. 9004.

An attorney has no implied authority to settle his client's cause unless confronted with an emergency and there is no opportunity to consult with him. *Pye v. D.*, 204M319, 283NW487. See Dun. Dig. 690(39).

Plaintiff's counsel may move for a dismissal in open court when defendants are present ready for trial, and plaintiff cannot be found. *Hoffer v. F.*, 204M612, 284NW 873. See Dun. Dig. 688.

Where plaintiff's counsel when case was ready for trial could not find plaintiff and had judgment entered without prejudice, plaintiff later had right to move court to vacate dismissal and for reinstatement of action on calendar by another attorney. *Id.* See Dun. Dig. 688.

An attorney-at-law, although an officer of the court, stands in no better position in respect of authority to make service of summons than any other private citizen, and he is not a statutory "officer" for the service of summons. *Melin v. A.*, 285NW830. See Dun. Dig. 685.

A client may, without consent of his attorney, settle and compromise with his adversary all matters in litigation, in such manner and upon such terms as he may deem necessary for protection of his interests, notwithstanding an express agreement with attorney that he will not settle or compromise without his consent or approval. *Krippner v. M.*, 287NW19. See Dun. Dig. 675a.

**5691. Proof of authority.**

Where attorney for mortgagee appoints a resident attorney upon whom mortgagor is directed to serve papers in proceeding, nothing to contrary being shown, presumption is that he had authority to make such appointment. *Rivkin v. N.*, 195M635, 263NW920. See Dun. Dig. 687.

**5693. Change of attorney.**

A contract of employment between attorney and client may be cancelled by latter at will, with or without cause; but attorney has right to recover reasonable value of services theretofore rendered. *Pye v. D.*, 204M319, 283 NW487. See Dun. Dig. 669a.

Client may discharge his attorney at his election, with or without cause. *State v. Probate Court of Hennepin County*, 204M5, 283NW545. See Dun. Dig. 669a.

A client has the right, as an implied condition of the contract under the law, to discharge his attorney, with or without cause, but attorney may recover reasonable value of services rendered but he cannot recover damages as for breach of contract. *Krippner v. M.*, 287NW19. See Dun. Dig. 669a.

Measure of damage for discharge of attorney without cause. 15MinnLawRev115.

**5695. Lien for attorneys' fees extended. \* \* \* \***

3. \* \* \* \* \*

4. Upon money or property in the hands of the adverse party to the action or proceeding in which the attorney was employed, from the time such party is given notice of the lien. If the client has an interest in any real or personal property, whether held by any bailee, pledgee, judgment creditor or otherwise, the attorney shall be entitled to a lien upon such property wherever situated, for the value of his services, whether under a special agreement as to compensation or for the reasonable value thereof, and shall also have a lien for any contributions in money or services which the attorney makes for the preservation of the client's interest in the property or for the enhancement of the value thereof. If the client is not a resident of this state, jurisdiction may be had by service of notice of order to show cause without the state or by mailing a copy thereof to the client outside of the state, without the need of further jurisdictional requirements, provided the property itself is within the state of Minnesota. (As amended Apr. 21, 1939, c. 394.)

5. \* \* \* \* \*

Subdivision 1 is declaratory of common law. In re *Strong & Warner Millinery Co.*, (USDC-Minn), 33F(2d) 1001.

Under subdivision 2, attorneys had lien on money recovered in settlement of suit commenced by bankrupt before adjudication for all services theretofore rendered.

In re Strong & Warner Millinery Co., (USDC-Minn), 33F (2d)1001.

Defendant is charged with constructive notice of lien of plaintiff's attorney, and though plaintiff and defendant may settle the litigation, such settlement would be subject to the lien of the attorney, for the amount of which the defendant would be liable; and defendant could not interpose a collusive judgment obtained in another state to defeat the attorney's lien. *Byram v. Miner*, (USCCA8), 47F(2d)112. Cert. den. 283US854, 51 SCR648. See Dun. Dig. 710.

Where the action was dismissed because of such settlement the attorney was entitled to have the judgment vacated, with leave to intervene for the purpose of enforcing the lien. Id. See Dun. Dig. 710.

Expenses incurred by attorney is part of his "compensation" within the meaning of this section. Id. See Dun. Dig. 706.

Retaining lien of attorneys on money paid in settlement is not divested merely by an order of court entitling the client to a vacation of the settlement. 173M141, 216 NW793.

The fixing and allowance of fees of an attorney for a receiver are largely in the discretion of the trial court and will not be disturbed except for an abuse of such discretion. 173M619, 216NW784.

Attorneys fees of \$21,000 were allowed in litigation involving trust property of \$2,730,000. *Butler v. B.*, 183M 218, 235NW918. See Dun. Dig. 701.

An order, upon an order to show cause submitted upon affidavits determining right of respondent to an attorney's lien and the amount thereof, held a final order and appealable. *Canfield v. J.*, 183M503, 237NW 190. See Dun. Dig. 302.

Attorney suing for compensation held not to have shown authority of son of defendant to settle case and thereby fix basis for recovery of contingent fee. *Dell v. M.*, 184M147, 238NW1. See Dun. Dig. 706.

An attorney has a lien upon the cause of action of his client from the time of the commencement of the action to enforce it; and, if his client settles with the defendant, he may adopt the amount of the settlement as the basis upon which to determine the amount of his recovery. *Dell v. M.*, 184M147, 238NW1. See Dun. Dig. 706(13).

In an attorney's lien proceeding, it is too late to object, for the first time on appeal, that the lien claimant was not an attorney of record and so not entitled to a lien in any event. *Meacham v. B.*, 184M607, 240NW540. See Dun. Dig. 384(39).

In an attorney's lien proceeding, it was proper for the trial court, in order to render a judgment determinative of the whole controversy, to order in as an additional party an attorney admittedly entitled to share in the fund subject to the lien. *Meacham v. B.*, 184M607, 240NW 540. See Dun. Dig. 712, 7325.

An attorney not of record in an action may be entitled to a lien. *Meacham v. B.*, 184M607, 240NW540. See Dun. Dig. 703.

Allowance of \$60,000 to attorney saving the state and taxpayers \$390,000 was not excessive. *Regan v. B.*, 196 M243, 264NW803. See Dun. Dig. 701.

An attorney at law does not have a right, by reason of appearance in litigation for a client, to have a review of a judgment or decision rendered in such litigation. *State v. Probate Court of Hennepin County*, 199M297, 273 NW636. See Dun. Dig. 712.

Questions as to attorney fees not raised by the record will not be decided. Id.

An attorney is entitled to reasonable fees when amount to be paid is not agreed upon in contract for employment, taking into consideration time involved, importance of case to client and result achieved. *Daly v. D.*, 273NW 814. See Dun. Dig. 701.

Verdict for \$1,600 in a suit by an attorney to recover the reasonable value of services rendered held sustained by the evidence. Id.

Partnership contract between lawyers, as modified, held to entitle plaintiff to 65% of fees. *Grimes v. T.*, 201M541, 277NW236. See Dun. Dig. 702a.

Prosecution to judgment against client of attorney's claim for compensation for his services merges debt in judgment but does not extinguish security of attorneys' lien. *Mantz v. S.*, 203M412, 281NW764. See Dun. Dig. 2914.

Agreement between attorneys for mutual service in furtherance of a common cause and to divide equally profits to be derived therefrom did not create relationship of attorney and client, and amount of damages for breach of contract was division of fees called for in contract. *Clark v. Q.*, 203M452, 281NW815. See Dun. Dig. 2561(2).

Widow who had life estate only under decree of distribution of homestead could not encumber right of child in remainder by entering into an agreement with an attorney to give a lien upon the property for services to be rendered. *Kohrt v. M.*, 203M494, 282NW129. See Dun. Dig. 704, 4220.

An assignment in furtherance of an attorney's lien and to secure other indebtedness does not impose liability for costs and disbursements upon the assignee. *Dreyer v. O.*, 287NW13. See Dun. Dig. 649.

Where client exercises his legal right to settle with his adversary, in good faith and without purpose to defraud attorney out of his compensation, latter may recover only reasonable value of services rendered by

him down to time of settlement. *Krippner v. M.*, 287NW 19. See Dun. Dig. 699a.

An attorney is given a lien for his compensation from time of service of summons in action, and statute vests in him a legal right to resort to cause of action, or any settlement thereof without his consent, for his compensation. Id. See Dun. Dig. 706.

Parties to a cause may settle their differences notwithstanding the attorney's lien, but defendant is liable to the attorney for the amount of his lien if settlement is made in disregard of attorney's rights. Id. See Dun. Dig. 706.

Where taxpayers brought action for benefit of school district against the wishes of the school board and recovered judgment, fees of attorney must be allowed and ascertained prior to satisfaction of the judgment. *Op. Atty. Gen.* (779n), June 7, 1934.

Division of fee when attorneys act jointly. 23MinnLaw Rev213.

#### 5696. Refusal to surrender property to clients.

Order for impounding attorneys' fees and requiring client to give security pending determination of distributive shares of several attorneys, held not appealable. 180M30, 230NW113.

Evidence held to show funds in attorney's hands which court rightly ordered him to turn over to clients. *Gerlich v. R.*, 184M346, 238NW640.

Seeking in a summary proceeding to compel an attorney to disgorge embezzled funds is not inconsistent with holding bank upon a forged indorsement of client's name upon a check payable to them both. *Rosacker v. C.*, 191M553, 254NW824. See Dun. Dig. 2914.

#### 5697. Removal or suspension of attorney.—1. \* \* \*

(A) Upon his being convicted of a felony, or of a misdemeanor involving moral turpitude; in either of which cases the record of conviction shall be conclusive evidence—, but this section shall not be construed to apply to a conviction for contempt of court. (As amended Mar. 14, 1933, c. 79.)

\* \* \* \* \*  
Attorney disbarred for making willful and known false representations to others than clients who, to his knowledge, trust to such representations. 171M437, 214 NW652.

Professional misconduct warranting disbarment, and limitations on time to proceed for disbarment. 171M352, 214NW662.

Misappropriation of funds held to warrant disbarment. 171M434, 214NW663.

Deception of court and slanderous and contemptuous remarks by female attorney held ground for disbarment. 171M492, 214NW666.

Retention of bail money as fees held not to constitute misconduct requiring disbarment of attorney. 172M248, 215NW175.

Attorney receiving money from a client to be applied on a claim against the client, but failing to apply it, was disbarred. 172M158, 215NW191.

Attorney disbarred for withholding money of client. 172M347, 215NW425.

Attorney charged with having pleaded guilty to indictment for attempting to evade tax imposed by Revenue Act of 1921 (Mason's U. S. Code, Title 26, Chap. 30), should have opportunity to prove that offense was committed under circumstances not involving moral turpitude. 173M297, 215NW427.

Evidence held insufficient to justify disbarment of attorney on the ground of bad faith or intentional misconduct toward his client, though showing negligence in failing to ascertain state of account and to have proper settlement. 172M532, 216NW219.

Evidence held not to require disbarment. 173M274, 217NW142.

Conviction of attorney for attempt to evade federal income tax shows conviction of a "misdemeanor involving moral turpitude." 173M297, 217NW356.

Attorney admitting specific charges of bribing public official and simply asking leniency on ground of previous good character, will be disbarred. *Erickson*, 175M626, 221NW724.

In a proceeding for discipline and disbarment of an attorney, he may be called for cross-examination under the statute. *Halvorson*, 175M520, 221NW907.

Attorney suspended for failing to promptly account for collections. *Halvorson*, 175M520, 221NW907.

Attorney fraudulently received property from bankrupt and aiding to conceal the same and in undertaking to get client to will farm to certain person, should be disbarred. 176M519, 223NW921.

Attorneys suspended for misconduct. 177M203, 225NW 97.

Attorney receiving retainer and doing nothing, disbarred. *Redding*, 177M352, 225NW274.

Failure to account to client for money collected is ground for disbarment, and it is no defense that the client resort to disbarment proceeding to compel such accounting, and agrees to stop the proceeding if the money is paid. 178M647, 227NW892.

Suspension for 18 months imposed on attorney who pleaded guilty to grand larceny in second degree while

acting in capacity other than attorney. Neumeister, 180 M146, 230NW487.

Misapplication of money of clients, held ground for disbarment. 180M148, 230NW582.

Attorney disbarred for misappropriating his client's money. Kahner, 180M556, 231NW233(1).

Attorney disbarred for conviction of crime against United States. Beach, 180M557, 231NW421(1).

Concealing collection and misappropriating client's money, held ground for disbarment. 181M65, 231NW396.

Attorney held guilty of misconduct in taking employment with a bank on a salary basis and agreeing with the bank that his fees as an attorney shall belong to the bank. 181M254, 232NW318. See Dun. Dig. 664.

Entire failure to act in making collections and to answer correspondence, held ground for disbarment. Scott, 181M230, 232NW108. See Dun. Dig. 678.

Use of criminal process by county attorney to collect civil claims was misconduct requiring discipline. Joyce, 182M156, 234NW9. See Dun. Dig. 678, 2307.

The embezzlement of funds coming into the hands of respondent, an attorney at law, as guardian of incompetent ex-service men, he evidently having been appointed such guardian because of being an ex-service man and a lawyer, justifies no other discipline than disbarment. Fitz Gibbons, 182M373, 234NW637. See Dun. Dig. 678.

Attorney convicted of compounding a crime was disbarred. Ostensoe, 183M99, 236NW521. See Dun. Dig. 678(94).

A lawyer's conviction of a felony is ground for disbarment. Nelson, 183M140, 235NW675. See Dun. Dig. 678(94).

An attorney who appropriates his client's money and neglects to protect the client's interests, and who, when called to account, seeks by falsehood to hide his wrongdoing, should be permanently disbarred. Smith, 183M220, 236NW324. See Dun. Dig. 678(95).

Findings of the referee as to misappropriation by an attorney of funds intrusted for investment, of perjury, and of knowingly filing in public offices forged instruments, require his disbarment. Friedman, 183M350, 236NW703. See Dun. Dig. 678.

Record held not to bring out clearly any of the charges to be barred by the limitation provision of this section. Friedman, 183M350, 236NW703. See Dun. Dig. 679a(7).

Questions of constitutionality of a statute or of conflict between legislative and judicial authority over the admission and disbarment of attorneys should not be determined, except upon adequate legal argument and only when essential for a decision of the case before the court. Friedman, 183M350, 236NW703.

Attorney admitting that he appropriated and converted money belonging to the estate of an insane person was disbarred. Tollefson, 183M349, 237NW192. See Dun. Dig. 678(95).

Attorney's systematic withdrawals of funds belonging to ward whose guardian he was for his own personal use held to require disbarment. In re Westphal, 183M568, 237NW598. See Dun. Dig. 678.

A lawyer's embezzlement of his client's funds commands discipline. In re Smith, 184M87, 237NW877. See Dun. Dig. 678.

Finding that attorney failed to account to his clients for money collected held sustained by evidence. Moerke, 184M314, 238NW690. See Dun. Dig. 680.

Misconduct of an attorney towards others than clients may be such as to require removal of the attorney from his office. Moerke, 184M314, 238NW690. See Dun. Dig. 678(95).

Referee's finding that attorney was guilty of misconduct in converting ball money while acting as a United States court commissioner held supported by evidence. Moerke, 184M314, 238NW690. See Dun. Dig. 680.

The misconduct here complained of was continuing misconduct, as held in the Cherry Case, 166 Minn. 448, 208 N. W. 197, 45 A. L. R. 1108, and later cases, and the proceeding for discipline was not barred by this section. Moerke, 184M314, 238NW690. See Dun. Dig. 678(95).

Attorney's conduct in manner of dealing with other attorneys disapproved. Gurley, 184M450, 239NW149. See Dun. Dig. 678.

Lawyer obtaining money by falsely representing that charges for violation of liquor laws had been filed was disbarred. Chisholm, 185M326, 241NW53. See Dun. Dig. 678.

Appropriating and using for his own purposes moneys of different clients, and even indorsing names of payees, of checks and warrants, without authority, in order to obtain money of such payees, must result in disbarment of attorney. In re Manahan, 186M98, 242NW548. See Dun. Dig. 678.

Attorney should not be disciplined for failure to pay over money where he, in good faith, considered that he was not agent or attorney for complaining party. In re Hughes, 186M204, 242NW711. See Dun. Dig. 678.

Attorney guilty of "racketeering" should be disbarred. In re Moses, 186M357, 243NW386.

Evidence held to sustain finding that attorney retained money of clients in bad faith. Gerlich, 187M88, 244NW414.

Misconduct of attorney in retaining moneys of clients was continuing, and disbarment was not barred by statute of limitations. Gerlich, 187M88, 244NW414.

Findings and order of district court in summary proceedings were properly received in evidence in disbarment proceedings. Gerlich, 187M88, 244NW414.

Delay of attorney in paying inheritance tax for client, held insufficient to require discipline. Jelle, 187M140, 244NW548. See Dun. Dig. 678.

Attorney failing to account to client for money should be disbarred. Larson, 187M427, 245NW626. See Dun. Dig. 678.

Attorney convicted of felony was disbarred. Bell, 188 M31, 246NW467. See Dun. Dig. 678.

A lawyer's conviction of a felony calls for disbarment. Sachs, 188M94, 246NW562. See Dun. Dig. 678.

Attorney pleading guilty to grand larceny in second degree was disbarred. Smith, 188M385, 246NW921. See Dun. Dig. 678(94).

Attorney who had an unexplained shortage as administrator of an estate was disbarred. Evan Hughes, 188M460, 247NW680. See Dun. Dig. 678(95).

Failure to promptly account to client for moneys and to respond to letters from bar associations calls for disbarment. Breeding, 188M367, 247NW694. See Dun. Dig. 678(95).

Convictions of contempt of United States district court is not a conviction of a felony or of a misdemeanor involving moral turpitude. Conley, 188M575, 248NW41. See Dun. Dig. 678(94).

An attorney who receives money from his client to apply to a specific purpose mingles it with his own funds, and fails to apply it as directed should be subjected to discipline. Solem, 188M572, 248NW212. See Dun. Dig. 678(95).

Misappropriation of funds collected, held to require disbarment. Severson, 189M20, 248NW293. See Dun. Dig. 678(95).

Privilege given an attorney to practice is always subject to revocation for cause. Greathouse, 189M51, 248NW735. See Dun. Dig. 678.

Supreme court is not confined or limited to particular statutory grounds for disbarment of an attorney. Id.

Attorney failing to account for client's funds and failing to answer letters was disbarred. Bodin, 189M396, 249NW569. See Dun. Dig. 678.

Misconduct of attorney in real estate business subjects him to discipline, though not arising out of relationship of attorney and client. Waleen, 190M13, 250NW798. See Dun. Dig. 678, n. 1.

When accused, in a disbarment proceeding, is in default for want of an answer, an order for discipline will be entered upon assumption that he is guilty as charged in accusation, if accusation states facts constituting misconduct. Stauning, 190M405, 252NW84. See Dun. Dig. 679a(5).

Misappropriation of money by attorney in guardianship proceeding requires disbarment. Id. See Dun. Dig. 678.

Attorney embezzling money paid to him by client for divorced wife should be disbarred. Dahlberg, 190M496, 252NW417. See Dun. Dig. 678.

Attorney failing to pay client small sum of money received and failure to pay another small amount toward printing of brief, held guilty of misconduct, but, in view of previous upright dealings, was discharged with censure. Morton, 190M498, 252NW417. See Dun. Dig. 678.

Failure of an attorney at law under an order of probate court to account for guardianship funds in his possession as guardian of minor wards, failure to turn over residue of guardianship estate to a subsequent guardian, allowing payment by guardianship bondsman to new guardian of amount in default and appropriation of client's money to his own use held to require disbarment. Ebert, 191M589, 255NW89. See Dun. Dig. 678.

In absence of a settled case, findings of fact of a referee in a proceeding for disbarment or discipline of an attorney are conclusive. Waters, 192M262, 256NW139. See Dun. Dig. 350.

Attorney who obtained money of client by forging mortgages and abstracts of title and other papers and misappropriating moneys invested therein by client should be disbarred. Id. See Dun. Dig. 678.

Misconduct of attorney in forging mortgages and papers and obtaining money from a client making investment was a continuing misconduct and limitations did not begin to run until attorney made restitution. Id. See Dun. Dig. 679a.

Failure of an attorney at law to account and pay over to clients proceeds of litigation or collections, or to honestly transact business as agent for another is misconduct, warranting discipline or disbarment. Nelson, 192M313, 256NW186. See Dun. Dig. 678.

For raising amounts on receipts attached to verified bills, upon which respondent, as county attorney, received reimbursement from county for alleged expenditures incident to his official duties, thereby defrauding county of funds so obtained, he is disbarred. Forbes, 192M544, 257NW329. See Dun. Dig. 678.

Attorney disbarred for conviction of a felony. Ginsberg, 192M547, 257NW337. See Dun. Dig. 678(94).

An attorney who as executor substituted a worthless note for money he had taken from estate was morally unfit to practice law. Strand, 194M391, 260NW499. See Dun. Dig. 678.

Judgment of disbarment entered by supreme court of another state should be given full faith and credit, unless procedure therein was wanting in due process or

court of that state committed a probable error. Leverson, 195M42, 261NW480. See Dun, Dig. 678, 5207.

Upon files and affidavit of default made by secretary of state board of law examiners, attorney was disbarred. Truax, 195M224, 262NW221. See Dun, Dig. 678.

Attorney appropriating to his own use moneys in his possession belonging to clients should be disbarred. Rasmussen, 195M190, 262NW258. See Dun, Dig. 678.

An attorney at law, convicted of forgery, a felony, was disbarred. MacLean, 196M5, 263NW906. See Dun, Dig. 678.

Attorney was suspended for six months for taking more of recovery of infant than was allowed by order of court and for neglecting to obey order. Ostensoe, 196M102, 264NW569. See Dun, Dig. 678.

Attorney was disbarred for offenses with respect to money though relation was not professional. Waleen, 196M295, 264NW802. See Dun, Dig. 678.

Attorney misappropriating money from clients and his partner was disbarred. McGrath, 196M351, 265NW23. See Dun, Dig. 678.

A court which is authorized to admit attorneys has inherent jurisdiction to suspend or disbar them. Tracy, 197M35, 266NW88. See Dun, Dig. 678.

It does not follow that, because certain conduct is usual or permissible in commercial business, it is also permissible to a lawyer. *Id.* See Dun, Dig. 678.

Attorney, engaged in the business of liquidating the indebtedness of small debtors, disbarred for soliciting business; willfully assuming a status wherein his personal interest was opposed to that of his client without so advising the latter; deliberately making exploitation of rather than service to clients has professional objective; and by so conducting his practice as to subject the legal profession to disrepute. *Id.*

Provision for two-year period of limitation for bringing disbarment proceedings is unconstitutional as invasion by legislature of judicial field. *Id.* See Dun, Dig. 679a.

On petition for reargument certain statements of fact were modified. Tracy, 197M35, 267NW142. See Dun, Dig. 681a.

Lawyer convicted of forgery and sent to prison was disbarred. Olson, 197M409, 267NW361. See Dun, Dig. 678.

Attorney failing to file answer to accusation was disbarred. Ahlstrom, 198M29, 268NW638. See Dun, Dig. 678.

Deliberately false testimony of an attorney followed by a false answer here, verified on his own oath, held to show such absence of ethical standards as to warrant disbarment. Miller, 199M295, 271NW593. See Dun, Dig. 678.

Attorney misappropriating funds intrusted to his care, even if relationship of attorney and client did not exist, will be disbarred. Lundeen, 200M577, 274NW825. See Dun, Dig. 678.

Conviction of a felony in another state is ground for disbarment. Karatz, 202M306, 278NW41. See Dun, Dig. 678.

One practicing law after being disbarred was sentenced to thirty days in jail for contempt. State Board of Law Examiners v. N., 203M598, 280NW5. See Dun, Dig. 1703.

A practicing lawyer may be disbarred for ignoring important letters coming to him in his professional capacity, though delinquency is due to mental ailment. Chmelik, 203M156, 280NW283. See Dun, Dig. 678.

Attorney who fails to plead or to file answer to petition and accusations will be disbarred. Powers, 203M312, 281NW271. See Dun, Dig. 679a.

Attorney failing to plead or file an answer to an accusation personally served upon him will be disbarred. Temple, 203M365, 281NW290. See Dun, Dig. 679a.

Conviction of a felony is adequate ground for disbarment. Hanson, 203M365, 281NW517. See Dun, Dig. 678.

The charges against respondent being a systematic and organized solicitation of personal injury cases, it is proper to receive and consider respondent's practice in that respect from its inception, regardless of the two-year limitation in the code and regardless of the Greathouse decision, in order to ascertain his attitude respecting such conduct and the likelihood of his continuing doing what he deems his right to do. McDonald, 204M61, 282NW677. See Dun, Dig. 679a.

Court may vacate findings of referee as a whole, and render decisions upon evidence offered and reported, considering that which was erroneously stricken or excluded, if written, and included in the settled case as in. *Id.* See Dun, Dig. 680.

Proof of guilt must be cogent and compelling before discipline or disbarment be adjudged and isolated cases of solicitation do not call for discipline. *Id.* See Dun, Dig. 680.

Where a case has been settled, findings of referee in a disbarment proceeding are not conclusive, and petitioner or prosecutor may challenge same as contrary to preponderance of evidence. *Id.* See Dun, Dig. 680.

Though no statutory authority is found for taxing costs and disbursements against a respondent in a disbarment proceedings, it is proper to require their payment as a condition to reinstatement. McDonald, 204M61, 284NW888. See Dun, Dig. 681a, 682a.

Aiding and abetting a corporation and a disbarred attorney in unauthorized practice of law required disbarment. Quigley, 287NW105. See Dun, Dig. 678.

Attorney having agents engaged in solicitation of cases of persons desiring to obtain benefit of mortgage moratorium law is subject to discipline and disbarment. Op. Atty. Gen., Aug. 22, 1933.

Rules governing attorneys in the practice of their profession. 16MinnLawRev270.

(2). Under regulation 200 adopted by state board of health, department may pass upon plans submitted to it and approve or disapprove, though plans are prepared by an engineer who is not qualified under state law. Op. Atty. Gen. (255m), June 3, 1937.

## ARCHITECTS, ENGINEERS AND SURVEYORS

**5697-1. Registration required.**—In order to safeguard life, health and property, any person practicing or offering to practice as an architect, a professional engineer or land surveyor in this State shall hereafter be required to submit evidence that he is qualified so to practice, and shall be registered as hereinafter provided; and from and after six months after this Act becomes effective, it shall be unlawful for any person to practice or to offer to practice in this State as in architect, a professional engineer (hereinafter called engineer) or a land surveyor except under the provisions of this Act. No person shall practice or offer to practice as an architect, engineer or land surveyor, nor accept employment for compensation, in responsible charge of the preparation of plans and specifications for building, engineering or surveying work in this State unless he shall have registered under the terms of this Act, except that the provisions of this Act shall not apply to practice with regard to any single family or two family dwelling nor to any farm dwelling or building accessory thereto, nor to any building work the total cost of which does not exceed \$7,500, nor to the erection, enlargement or alteration of any building or structure, by any person, firm or corporation, or the employees thereof, exclusively for his or its own occupancy and/or use, nor to any building or the plans or specifications therefor when such plans and specifications are prepared by an established contractor or builder in negotiating for employment as such or in detailing his proposal to or agreement with a person for whom he proposes to build as a contractor or builder or for use in obtaining a building permit in connection with such constructing or building work and that the same are signed by the authors thereof with a true statement of their relation to such construction and not as architects or engineers. ('21, c. 523, §1; Apr. 22, 1933, c. 404, §1.)

This section is not included in the title of the act. The title reads: "An act to amend Laws 1921, Chapter 523, sections 2, 9, 12, 13 and 14, relating to the practice of architecture, professional engineering and land surveying."

Op. Atty. Gen., June 28, 1933; note under §5345. Under this section, as amended by Laws 1933, c. 404, any engineer or land surveyor in responsible charge of accuracy and completeness of any particular phase of work must be registered. Op. Atty. Gen., Sept. 12, 1933.

Building inspector of city of Duluth is not required to determine whether architect or engineer preparing plans has registered under this act. Op. Atty. Gen., Nov. 22, 1933.

Whether engineer in employment of mining company is in responsible charge of preparation of plans and specifications for building, engineering or surveying is a question of fact to be determined by board and not the attorney general. Op. Atty. Gen. (10a-2), July 6, 1934.

One appointed by village council to perform work of an architect or engineer must be registered. Op. Atty. Gen., (10a), August 17, 1939.

**5697-2. Persons required to register—Titles which may be used.**—No person shall represent himself as, or use the title of, "Registered Architect," "Registered Professional Engineer" or "Registered Land Surveyor," unless such person is qualified by registration under this act.

No person, except an architect, engineer or land surveyor registered as provided for in this act, shall be employed in responsible charge of the preparation of plans or specifications for any public work or public improvement in this state or in responsible charge or supervision of architectural, engineering or land

surveying for any public work or public improvement in this state.

No plat, map or drawing of any survey or subdivision of lands required by law to be filed or recorded with the register of deeds or registered with the registrar of titles of any county, shall be filed, recorded or registered therein unless there shall be endorsed thereon a certificate by a registered land surveyor.

The provisions hereof shall not apply to any person holding an elective office when in discharging the duties thereof such person is required to do work or perform service of the character of work or service usually done or performed by an architect, engineer or land surveyor. ('21, c. 523, §2; Apr. 22, 1933, c. 404, §1.)

This section does not apply to county surveyor, who need not possess any qualifications beyond being a legal voter. Op. Atty. Gen. (10a-3), Dec. 28, 1934.

Parochial school is not a "public work". Op. Atty. Gen. (10a), Apr. 5, 1938.

**5697-9. Certificates of registration.**—The Board shall, on application therefor, on prescribed form and the payment of a fee of not to exceed Ten Dollars (\$10.00) issue a certificate of registration as an architect or an engineer, and on the payment of a fee of not to exceed Five Dollars (\$5.00) issue a certificate of registration as a land surveyor;

1. To any person over twenty-five (25) years of age, who is a citizen of the United States or Canada, or who has made declaration of his intention to become a citizen of the United States; who speaks and writes the English language; who is of good moral character and repute, and has been actively engaged either as an employer or an employee for five or more years in the practice of architecture or engineering, or engaged for four or more years in surveying work. The character of such practice or work shall be equal to the standards fixed by the Board. Each year of teaching or of study satisfactorily completed, of architecture, engineering or surveying in a school of architecture or engineering of a standard recognized by the Board, shall be considered as equivalent to one year of such active engagement.

2. To any person who holds a like unexpired certificate of registration issued to him by proper authority in the District of Columbia, in any state or territory of the United States, or in any province of Canada, in which the requirements for registration of architects, engineers or land surveyors are equal to those fixed by the board for this state, and in which similar privileges are extended to the holders of certificates of registration issued by this state.

3. To any person who prior to the passage of this act resided in this state and practiced as an architect, engineer or as a land surveyor.

When the evidence presented by an applicant for a certificate of registration shall not be conclusive or convincing as warranting the issuance of a certificate, the Board may require further evidence to be presented, or may subject the applicant to such examination as may be deemed necessary to establish his qualifications.

In determining the qualifications in such cases of applicants for registration as architects, a majority vote of the architect members of the Board only shall be required; in determining the qualifications in such cases of applicants for registration as engineers a majority vote of the engineer members of the Board only, shall be required; and in determining the qualifications of applicants for registration as land surveyors the affirmative vote of the land surveyor member and of one engineer of the Board only, shall be required.

The board may make reasonable rules and regulations for classifying and registering engineers in divisions according to their qualifications to practice different classes of engineering work and shall, in such case, register qualified applicants in one or

more such divisions in which they shall qualify under the terms of this act and shall, in any event, provide one such division for highway engineers.

Any person so qualified may be registered in two or all of the three professions covered by this act; but the aggregate fee for such registration shall not exceed \$15.00.

In case the Board denies the issuance of a certificate to an applicant, the registration fee deposited shall be returned by the Board to the applicant.

Certificates of registration shall expire on the last day of the calendar year for which they are issued and shall become invalid on that date unless renewed. It shall be the duty of the secretary-treasurer of the Board to notify, by mail, every person registered hereunder of the date of the expiration of his certificate and the amount of the fee required for its renewal for one year; such notice shall be mailed at least one month in advance of the date of the expiration of said certificate. Renewal may be effected at any time during the month of December by the payment of a fee of \$3.00 for an architect or any engineer, and \$1.00 for a land surveyor.

The failure on the part of any registrant to renew his certificate annually in the month of December as required above shall not deprive such person of his right of renewal thereafter, but the fees to be paid for the renewal of the certificate after the succeeding first day of January shall be Five (\$5.00) Dollars for an architect or an engineer, and Two (\$2.00) Dollars for a land surveyor. The aggregate fee for renewal of registration in two or three of the professions shall be the same as the single renewal fee for registration as an architect or an engineer. ('21, c. 523, §9; Apr. 22, 1933, c. 404, §2.)

Rule of State Board of Registration for architects, etc., requiring that Class 1 of registrants, who may be licensed without examination, comprise only those who can show that they have been actively engaged for six or more years prior to October 25, 1921, is in conflict with the provisions of this subdivision. Op. Atty. Gen., Sept. 25, 1931.

Board is required to register those who are already in practice without examination, under Laws 1933, c. 404. Op. Atty. Gen., May 10, 1933.

Board may not classify engineers in different degrees of professional ability but only to different types of engineering work. Op. Atty. Gen. (10a-2), Mar. 6, 1935.

Sections 5697-9 and 5697-12 are not in conflict, and provision for renewal of license after Jan. 1, by payment of required fee would not be a defense in a prosecution for misdemeanor. Op. Atty. Gen. (10a-3), Mar. 10, 1937.

Board has discretion of determining whether one holding certificate of registration in another state has qualifications entitling him to certificate. Op. Atty. Gen. (10a-3), Sept. 20, 1937.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

(1). If an application for registration is made after July 1, 1933, requirement that person be over 25 years of age applies. Op. Atty. Gen. (10a-3), May 3, 1934.

(3). Person need not be over 25 years of age to be entitled to registration under this subdivision. Op. Atty. Gen., Dec. 22, 1933.

Mining engineer may not practice as city engineer unless qualified in such branch of engineering. Op. Atty. Gen. (10a-3), Apr. 17, 1934.

**5697-10. Revocation of certificates of registration, etc.**

No specific duties rest upon building inspectors to enforce this act. Op. Atty. Gen., Oct. 9, 1933.

**5697-12. Offenses.**—Any person who is not authorized to practice in this State as an architect, an engineer or a land surveyor under the provisions of this Act and shall so practice or offer so to practice, and any person presenting or attempting to file as his own the certificate of registration of another, or who shall give false or forged evidence of any kind to the Board, or to any member thereof, for the purpose of obtaining a certificate of registration, or who shall falsely impersonate any other practitioner, of like or different name, or who shall use or attempt to use an expired or revoked certificate of registration, shall be deemed guilty of a misdemeanor. ('21, c. 523, §12; Apr. 22, 1933, c. 404, §3.)

Sections 5697-9 and 5697-12 are not in conflict, and provision for renewal of license after Jan. 1, by payment of required fee would not be a defense in a prosecution for misdemeanor. Op. Atty. Gen. (10a-3), Mar. 10, 1937.

**5697-13. Persons exempt from registration.**—The following shall be exempted from the provisions of this Act:

1. Practice as an architect, an engineer or a land surveyor in this State by any person not a resident of and having no established place of business in this State, or any person resident in this State, but whose arrival in the State is recent; provided, however, such person shall have filed an application for registration as an architect, an engineer or a land surveyor and shall have paid the fee provided for in Section 9 of this Act. Such exemption shall continue for only such reasonable time as the Board requires in which to consider and grant or deny the said application for registration; and provided such person is legally qualified to practice such profession in his own state or county in which the requirements and qualifications for obtaining a certificate of registration are not lower than those specified in this act.

2. Practice as an architect, an engineer or a land surveyor by any person not a resident of, and having no established place of business in this State, as a consulting associate of an architect, an engineer or a land surveyor registered under the provisions of this Act; provided the non-resident is qualified for such professional service in his own State or country.

3. Practice as an architect, an engineer or a land surveyor solely as an officer or as an employe of the United States. ('21, c. 523, §13; Apr. 22, 1933, c. 404, §4.)

**5697-14. Corporations and partnerships.**—A corporation or partnership may engage in work of an architectural or engineering character, or in land surveying, in this State, provided the person or persons connected with such corporation or partnership in responsible charge of such work is or are registered as herein required of architects, engineers and land surveyors, or is or are otherwise authorized or permitted to practice as an architect, engineer or land surveyor. The same exemptions shall apply to corporations and partnerships as apply to individuals under this Act. ('21, c. 523, §14; Apr. 22, 1933, c. 404, §5.)

**5697-16. May appeal to district court.**—Any person aggrieved by any ruling or order of the Board made under the provisions of this act, may appeal therefrom to any district court of the state by serving written notice of such intention upon the secretary of the board, specifying such court, within thirty days after the same is made. The secretary of the board shall thereupon file with the clerk of such court a certified copy of the order or rulings or findings of fact upon which the same are based, 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, such ruling or order of the board shall be stayed pending the said appeal. (Act Apr. 22, 1933, c. 404, §6.)

**5697-17. Effective July 1, 1933.**—This Act shall take effect and be in force from and after its passage but registrations required hereunder by persons heretofore practicing in this state may be made at any time before July 1, 1933. (Act Apr. 22, 1933, c. 404, §7.)

If an application for registration is made after July 1, 1933, requirement that person be over 25 years of age applies. Op. Atty. Gen. (10a-3), May 3, 1934.

**CERTIFIED ACCOUNTANTS**

**5698. Board of accountancy.**

Audit of affairs of municipality by certified public accountants may not be accepted in lieu of examination to be made by public examiner under Laws 1929, c. 259, §2. Op. Atty. Gen., June 16, 1932.

Liability to third persons for negligent certification by public accountants. 15MinnLawRev355.

**5699. Officers—Duties—Examinations—Report.**

Rules and regulations must conform with statute law. Op. Atty. Gen., Nov. 23, 1933.

Board is without authority to promulgate rule requiring registration of all certified public accountants. Id. Members of State Board of Accountancy are not entitled to traveling expenses nor per diem while attending national meetings of other state boards. Op. Atty. Gen. (882a-3), Sept. 28, 1934.

Attendance of members at national meetings of other state boards, and in going to and returning therefrom is not "performance of the duties under this act," and there is no statutory authority for payment of such traveling expenses and per diem out of state funds. Op. Atty. Gen. (882j-3), Nov. 1, 1934.

**5700. Certificates granted to whom.**—No certificate for a certified public accountant shall be granted to any person other than a citizen of the United States, or person who has in good faith duly declared his intention of becoming such citizen, and is over the age of twenty-one years and of good moral character and (except under the provisions of Section 4 (5701) of this act) who shall have successfully passed an examination in "Accounting," "Auditing" and "Commercial Law," affecting accountancy, and on such other subjects as the board may deem advisable. No person shall be permitted to take such examination unless he shall for a period of at least three years have been employed in the office of a "public accountant" as an assistant, or shall have been practicing as a public accountant on his own account, or who shall have served for a like time as chief examiner or a senior examiner in the office of State Comptroller, or as an Internal Revenue agent or collector of the Bureau of Internal Revenue of the United States of America shall have for a like time engaged in auditing the income tax returns of any person, co-partnership, corporation or fiduciary, and who shall not at least three years prior to the date of said examination have successfully passed an examination in such subjects as may be prescribed by the board, touching his general education, qualification and fitness for an accountant; provided, that said board may, in its discretion, waive the preliminary examination of an applicant who, in its opinion, has had a general education equivalent to that which may be prescribed by its rules and is otherwise qualified. ('09, c. 439, §3; G. S. '13, §4964; Apr. 13, 1933, c. 236.)

A rule of state board of accountancy requiring that applicant have an established voting residence in the state or to have maintained a regular office within the state for at least one year is unauthorized. Op. Atty. Gen., Nov. 23, 1933.

Deputy collectors are not included. Op. Atty. Gen. (882f-1), Jan. 8, 1936.

Conviction of a felony does not render certified public accountant ineligible to hold certificate. Op. Atty. Gen. (882e), Oct. 6, 1937.

**5701. Certificate without examination, to whom.** Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5702. Holder of certificates, how styled.**

All members of a partnership must hold the Minnesota certificates to use term "Certified Public Accountants," and this means partners in main organization as well as those in district organization. Op. Atty. Gen. (882h), Jan. 7, 1936.

**5703. Fee for examination and certificate.**

Members of State Board of Accountancy are not entitled to travelling expenses nor per diem while attending national meetings of other state boards. Op. Atty. Gen. (882a-3), Sept. 28, 1934.

Attendance of members at national meetings of other state boards, and in going to and returning therefrom is not "performance of the duties under this act," and there is no statutory authority for payment of such traveling expenses and per diem out of state funds. Op. Atty. Gen. (882j-3), Nov. 1, 1934.

Fees collected by State Board of Accountancy are state funds, and payment of authorized expenditures may be made from fees collected, which are paid into state treasury pursuant to §53-47. Op. Atty. Gen. (882j-3), Dec. 10, 1934.

**5704. Revocation and reinstatement of certificates of certified public accountants.**—Said state board of accountancy may revoke any certificate issued under this Act or may cancel the registration of any certificate issued under this Act for bad moral character,

dishonesty, conviction of crime, incompetency or unprofessional conduct; provided, a written notice shall have been mailed to the holder of such certificate at least twenty days before any hearing thereon, stating the cause for such contemplated action and appointing a time and place for a hearing thereon by the state board of accountancy, and further provided, that no certificate issued under this Act shall be revoked until an opportunity for such hearing shall have been afforded. At all such hearings, the attorney general of this state, or one of his assistants designated by him, shall attend. Certificates issued or registered under this Act shall be surrendered to the state board of accountancy on their revocation by said board.

Said state board of accountancy may reinstate a revoked certificate upon a petition for reinstatement by the former holder thereof presented within two years after the date of revocation. Said board of accountancy shall appoint a time and place for the hearing on such petition and may prescribe any necessary rules and regulations relating to such reinstatement of a revoked certificate not inconsistent with any provisions of the statutes relating to public accountancy. ('09, c. 439, §7; G. S. '13, §4968; Apr. 15, 1933, c. 283.)

There should be a written complaint, notice to defendant and formal hearing. Op. Atty. Gen., Oct. 20, 1933.

Section does not authorize board to dispose of cases with a reprimand. Id.

#### BASIC SCIENCES AND PRACTICE OF HEALING

##### 5705-1. Basic sciences defined—Practicing, etc.

For application of this act to persons licensed under act regulating massage, see Laws 1929, c. 347, §15, post, §5784-27.

Granger v. A., 190M23, 250NW722; note under §5717. This act is constitutional. 181M341, 232NW517. See Dun. Dig. 1675, 7483(26).

Act is constitutional. State v. State Board of Examiners, 189M1, 250NW353. See Dun. Dig. 7483.

One who induced women to come to lectures for which she charged a fee and for those who had secondary anemia and menstrual troubles suggested medicine and tablets which she had for sale was engaged in practicing healing, which would require a license. State v. Mielke, 202M114, 277NW420. See Dun. Dig. 7483.

This act does not apply to chemistry until after the expiration of the calendar year 1931. Op. Atty. Gen., Mar. 24, 1930.

Board of basic science may conduct examination on New Year's day, a legal holiday. Op. Atty. Gen. (303b), Oct. 5, 1934.

It is unlawful for a fraternal corporation to employ a doctor of medicine and an osteopath for treatment of members on a salary basis, or on basis of percentage of dues paid by members, money being equally divided between the two practitioners, and the practitioners are guilty of misconduct. Op. Atty. Gen. (303), August 8, 1939.

##### 5705-5. Same—Organization—Officers—General powers, etc.

Board has right to sell copies of past examination questions to prospective examinees at cost. Op. Atty. Gen., May 27, 1933.

##### 5705-6. Applications for examinations of persons desiring to practice healing—Etc.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

##### 5705-8. Registration without examination—Fees.

Naturopath resorting to natural remedies was unlawfully engaging in practice of medicine and was not entitled to benefit of registration without examination. State v. State Board of Examiners, 189M1, 250NW353. See Dun. Dig. 7483.

##### 5705-9. Certificates without examination to practitioners from other states, etc.

Reciprocity is permissible with a state giving an examination which the board is satisfied deals with subject matter substantially the same as that in our examination, although the names of the subjects may not be identical with the names of the parts of our examination. Op. Atty. Gen., Sept. 11, 1931.

Board cannot accept examinations of national board of chiropractic examiners. Op. Atty. Gen., Oct. 28, 1933.

##### 5705-18. Annual registration of persons authorized to practice healing—etc.

Physicians and osteopaths must pay annual registration fee to practice. Op. Atty. Gen. (303c-10(a)), May 21, 1936.

##### 5705-18. Practicing without recording certificate of registration in basic sciences, etc.

Physicians and osteopaths must pay annual registration fee to practice. Op. Atty. Gen. (303c-10(a)), May 21, 1936.

##### 5705-19. Other offenses—Penalty—Record of convictions—Cancellation, etc.

Board may cancel certificate voluntarily surrendered. Op. Atty. Gen. (303b), May 2, 1935.

##### 5705-24. Healers, etc., to report defective children.

—Every duly licensed person practicing the art of healing in any way and every person diagnosing human ailments within the state who shall attend or treat any child of pre-school age or of school age who is not attending school, and every such person who observes any such child in a family in which he attends or treats any person for any cause, shall report directly to the state department to which communicable diseases are required to be reported, any defect, injury or disease of a continuous nature or which might permanently handicap the child, and which comes under his/her observation provided such child is not under the age of one year. He/she shall also particularly indicate those cases in which the parents or guardian of the child have not the knowledge or means necessary to insure all necessary treatment of the child. Provided, if there be filed with the clerk or secretary of such department a certificate of a reputable physician of the community that a defect, injury or disease of a child is incurable or is being cared for, further compliance with the provisions of this act with respect to such defect or handicap shall not be required. (Act Apr. 24, 1929, c. 328, §1.)

5705-25. Reports to be available to Children's Bureau.—Such reports shall be made available to the children's bureau and such children's bureau shall disseminate information designed to prevent the permanent crippling or handicapping of children. (Act Apr. 24, 1929, c. 328, §2.)

5705-26. State Board of Health to furnish blanks.—The state board of health shall formulate and furnish to such persons blanks on which such reports may be made. (Act Apr. 24, 1929, c. 328, §3.)

#### UNFAIR PRACTICES AFFECTING PUBLIC HEALTH

5705-31. Unfair competition and trade practices prohibited.—That upon application to the Governor of the State of Minnesota for relief from unfair competition and unfair trade practices arising from competition essentially and preponderantly intra-state, resulting in unemployment, economic distress and disorganization of service trades engaged in rendering and performing personal services upon a person or persons and licensed and regulated as such by the state, for the safeguard and protection of the public health from infection or contagion of communicable diseases, the Governor, upon approval thereof, is hereby authorized, empowered and directed to investigate, ascertain, declare and prescribe reasonable rules, regulations, or standards, to prevent such unfair competition and unfair trade practices, to establish standards of maximum hours of labor, minimum rates of pay and working conditions, whenever a variance therefrom would constitute unfair competition and unfair trade practices, to create trade areas with due regard to the proximity to state lines and differentiation between metropolitan and rural areas, and to make such provisions in relation to the enforcement thereof as he may from time to time determine, provided, however, the term "personal services" as used in this act shall not include the services of a person duly licensed or registered by the State of Minnesota to practice any of the healing arts. (Apr. 16, 1937, c. 235, §1.)

Act is constitutional. State v. McMasters, 204M438, 283 NW767.

**5705-32. Application—rules.**—Such application shall be made by not less than sixty-five percent of all persons, firms and corporations engaged in such service trades in any municipality or subdivision of the state, or in any trade area created under the provisions of this act. Such rules, regulations or standards to prevent unfair competition and unfair trade practices shall be prescribed and approved by the Governor after such reasonable public notice and hearing as he shall specify and if he finds: (1) that such rules, regulations or standards are not designed to promote monopolies or to eliminate or oppress such service trades and will not operate to discriminate against them and will tend to effectuate the policy of this act, (2) that such rules, regulations or standards are not inequitable and the interests of the consumers and the general public will be protected, and (3) that such rules, regulations or standards are necessary for the stabilization of the business of such service trades, the Governor may, as a condition of approval of any such rules, regulations or standards, impose such conditions for the protection of consumers, competitors, employes and others, and in the furtherance of the public interest, and may provide such exceptions to and exemptions from the provisions of such rules, regulations or standards as in his discretion is deemed necessary to effectuate the policy declared in this act. (Apr. 16, 1937, c. 235, §2.)

**5705-33. Shall be bound by rules.**—Upon the approval of any such rules, regulations or standards covering such service trades, all persons, firms or corporations engaged in such trade or business shall, as to the trade or business carried on by them, be bound by such rules, regulations or standards adopted or approved by the Governor, subject, however, to modification, amendment or termination thereof as the Governor may deem necessary to effectuate the purpose of this act. (Apr. 16, 1937, c. 235, §3.)

**5705-34. Assessments for expense.**—Every rule, regulation or standard prescribed or approved by the Governor shall contain provisions for assessing against and collecting from all persons, firms and corporations, subject to the rules, regulations or standards as employer or employe, on a fair and equitable basis therein set forth, assessments sufficient for expenses incurred in connection with the promulgation of the rules, regulations or standards, and administration, to be paid to the State Treasurer as may be prescribed. (Apr. 16, 1937, c. 235, §4.)

**5705-35. Orders of Governor to be reviewed by district court.**—All orders of the Governor prescribing, approving, disapproving, modifying, amending or terminating rules, regulations or standards shall be subject to review by any District Court of the state. In any such action, no injunction suspending the operation of the rule, regulation or standard, or any part thereof, during the pendency of the action shall be granted except upon the filing or approval by the court of a good and sufficient bond, running to the state and enforceable by the Governor, on behalf of all parties in interest, conditioned for the payment of all damages, loss of profits and of wages which may be sustained by any employer or employe affected by reason of such suspension, in the event the validity of the rule, regulation or standard shall be finally sustained. (Apr. 16, 1937, c. 235, §5.)

**5705-36. District Courts may restrain and prevent violation of rules.**—The District Courts of the state are hereby vested with jurisdiction to prevent and restrain violation of any rule, regulation or standard to prevent unfair competition and unfair trade practices approved under this act, and it shall be the duty of the County Attorney of any county having jurisdiction to institute proceedings in equity to prevent and restrain such violations. (Apr. 16, 1937, c. 235, §6.)

**5705-37. Violation a misdemeanor.**—Any person who violates any of the provisions of this act or who violates any duly adopted rule, regulation or standard, or who neglects, fails or refuses to comply with any notice duly issued by the Governor, or who fails, refuses or neglects to perform any duty imposed upon him by this act, shall be guilty of a misdemeanor and be punished accordingly. (Apr. 16, 1937, c. 235, §7.)

In prosecution of barber for charging less than minimum price for haircut, it must be assumed that governor took all steps required and did not act arbitrarily in fixing minimum charge, price not having been questioned in any district court. *State v. McMasters*, 204M438, 283 NW767. See *Dun. Dig.* 3435.

**5705-38. Governor may appoint enforcement agents.**—The Governor may designate or appoint such agents, deputies, commissioners, or any department of the state, to administer and enforce every order, rule, regulation or standard prescribed or approved by him. (Apr. 16, 1937, c. 235, §8.)

#### PHYSICIANS AND SURGEONS

##### 5706. Board of medical examiners.

Board has no power to suspend a license. *Op. Atty. Gen.*, Aug. 23, 1929.

The compensation of the secretary-treasurer and the stenographer to such secretary contemplated by section 5712 is within the control of the commission of administration and finance under Mason's Statutes, §53-7. *Op. Atty. Gen.*, Oct. 16, 1929.

There is no incompatibility between the office of health officer of the City of Sauk Center on the one hand and a member of state board or state employment on the other hand. *Op. Atty. Gen.*, Mar. 10, 1931.

A member of State Board of Medical Examiners may accept employment as a physician and surgeon by the State Board of Control for the care and treatment of inmates for the home school for girls. *Op. Atty. Gen.*, Mar. 10, 1931.

State board of medical examiners is not subject to supervision and control of department of administration and finance with respect to employment of attorney at law to procure evidence or fixing compensation. *Op. Atty. Gen.*, Oct. 24, 1933.

**5707. Examination and license—Revocation.**—A person not already authorized to practice medicine in the state, and desiring so to do, shall apply to the secretary of the board for examination, and pay a fee of 20 dollars for the use of the board, which in no case shall be refunded. At a time appointed, or at the next regular examination, he shall prove that he is of good moral character and that he has completed four entire sessions of not less than 36 weeks each at a medical school recognized by the board, and has received the degree of M. D. or M. B. He shall be examined in surgery, medicine, obstetrics, eye, ear, nose and throat, and such other branches as the board shall deem advisable. After such examination, the board, if five members thereof consent, shall grant him a license to practice medicine. The examination shall be both scientific and practical, and shall thoroughly test the fitness of the candidate. The board may refuse to grant a license to, or may suspend or revoke the license of, any person guilty of immoral, dishonorable, or unprofessional conduct, but subject to the right of the applicant or licentiate to appeal to the district court in the proper county on the questions of law and fact.

The words "immoral, dishonorable or unprofessional conduct" as used in this section shall mean: (a) Procuring, aiding or abetting a criminal abortion; (b) advertising in any manner either in his own name or under the name of another person or concern, actual or pretended, in any newspaper, pamphlet, circular or other written or printed paper or document, professional superiority to or greater skill than that possessed by fellow physicians and surgeons, or the positive cure of any disease, or the curing of venereal diseases, the restoration of "lost manhood," the treatment of private disease, peculiar to men or women, or the advertising or holding himself out to the public in any manner as a specialist in diseases of the sexual organs, or diseases caused by sexual weakness, self abuse, or excessive indulgences, or the advertis-

ing of any medicine or any means whatever whereby the monthly periods of women can be regulated or the menses re-established, or being employed by or in the service of any person, concern, actual or pretended, so advertising, or in any manner creating a fear of private diseases; (c) the obtaining of any fee, or offering to accept a fee on the assurance or promise that a manifestly incurable disease can be or will be cured; (d) willfully betraying a professional secret; (e) habitual indulgence in the use of drugs; (f) conviction for willfully violating any narcotic law; (g) conviction of offense involving moral turpitude; (h) conviction of a felony; (i) conduct unbecoming a person licensed to practice medicine or detrimental to the best interests of the public. (As amended Apr. 12, 1937, c. 203, §1.)

Professional care and skill required of physician. 174 M574, 219NW941.

Malpractice. *Gamradt v. D.*, 176M312, 223NW296.

Two year statute of limitations does not begin to run against malpractice suit until end of treatment. 178M 482, 227NW432.

Physicians, held negligent in treating a fractured knee cap, and measure and amount of damages determined. 181M381, 232NW708. See Dun. Dig. 7489, 7493.

A physician's professional acts, and the necessity and propriety thereof, are to be tested by the evidence of those who are trained and skilled in his particular school of medicine. 181M590, 233NW317. See Dun. Dig. 7494(19).

In the absence of expert medical testimony, the evidence was insufficient to support a finding that the attending doctor negligently failed to properly diagnose the patient's condition. 181M590, 233NW317. See Dun. Dig. 7496.

The evidence was insufficient to establish the causal connection between physician's alleged negligence and the necessity for an operation had seven months later. 181M590, 233NW317. See Dun. Dig. 7491a.

Instruction of court in malpractice case as to when treatment ceases, held erroneous. *Schmit v. E.*, 183M 354, 236NW622. See Dun. Dig. 7488b(62).

When a physician is employed generally to treat and heal an injury, he owes the duty of continued care and treatment. *Schmit v. E.*, 183M354, 236NW622. See Dun. Dig. 7488b(62).

Negligent failure to treat an injury, at a time when the need of treatment is known to the physician and there is opportunity to apply proper treatment, amounts to the same as negligent treatment. *Schmit v. E.*, 183 M354, 236NW622. See Dun. Dig. 7488.

So long as the relation of physician and patient continues as to the particular injury or malady which he is employed to cure, and there remains something for him to do in order to effect a cure, it cannot be said that the treatment has ceased; but if nothing further is to be done, and physician ceases to attend the patient in relation thereto, the treatment ordinarily ceases, without any formality. *Schmit v. E.*, 183M354, 236NW622. See Dun. Dig. 7488b(62).

Fact that patient died after tonsil operation in which local anesthetic was used would not alone support finding of use of excessive anesthetic or poison. *Johnson v. A.*, 186M253, 243NW67. See Dun. Dig. 7491.

Rule of *res ipsa loquitur* did not apply in action for death of one immediately after operation on tonsils. *Johnson v. A.*, 186M253, 243NW67.

It is not necessary for plaintiff, in malpractice case, to have expert testimony to sustain his claim. *Johnson v. A.*, 186M253, 243NW67.

Expert testimony to the effect that it was improper to treat a delirious patient in a hospital by applying restraints and administering hypodermic injections of strychnine, a stimulant, and that such treatment, was responsible for patient's death held to justify verdict. *Brase v. W.*, 192M304, 256NW176. See Dun. Dig. 7488.

Judgment for \$2500 held not excessive for deformity and lack of function of forearm for improper reduction of fracture by physician. *Citrowski v. L.*, 194M269, 260 NW297. See Dun. Dig. 7493.

Whether physician was guilty of malpractice in only using one splint to reduce broken bones in forearm held for jury. Id. See Dun. Dig. 7489(65).

One employing a physician has only a right to expect ordinary skill and ability of his profession, and if he lacks that, it is no defense that he did his own best, nor is there liability because physician in particular case did not use his own best skill or ability. *Quickstad v. T.*, 196M125, 264NW436. See Dun. Dig. 7488.

In action for malpractice, certain alleged admissions of defendant physician held insufficient to make case for jury, in absence of expert medical testimony whereby jury could have found that performance of operation as disclosed by evidence was not according to accepted standards of medical practice. Id. See Dun. Dig. 7494.

Evidence held insufficient to sustain any finding that hospital nurse failed to sterilize place where a hypodermic needle was inserted and a morphine solution injected. *Posthuma v. N.*, 197M304, 267NW221. See Dun. Dig. 4250a, 7489.

A physician and surgeon is not an insurer of a cure or good result of his treatment or operation, but is only required to possess skill and learning possessed by average member of his school of profession in good standing in his locality, and to exercise that skill and learning with due care. *Yates v. G.*, 198M7, 268NW670. See Dun. Dig. 7488.

Doctrine of *res ipsa loquitur* does not apply in malpractice case and opinion evidence of medical experts is necessary to make out a case. Id. See Dun. Dig. 7491.

Burden rests upon plaintiff to prove that harm resulted from negligence of defendants rather than from some other cause. Id.

No presumption of negligence arises from fact that an operation or treatment by a surgeon or physician does not result in a cure. Id.

Evidence held insufficient to sustain a finding that infection following operation was caused by any failure of defendants to exercise care and skill. Id. See Dun. Dig. 7492.

Proof of causal connection between injury and claimed negligence must be something more than consistent with plaintiff's theory of how injury was caused. Id.

Physician and surgeon is not insurer of a cure or good result of treatment or operation, but is only required to possess skill and learning possessed by average member of his school of profession in good standing in his locality, and to apply that skill and learning with due care. *Williamson v. A.*, 198M349, 270NW6. See Dun. Dig. 7488.

Proof of causal connection must be more than consistent with plaintiff's theories of how injury was caused. Id. See Dun. Dig. 7491a.

In action for malpractice, charging three doctors who participated in a gall bladder operation upon plaintiff with negligently having left within his body a gauze pack, court erred in not directing jury to return a verdict for doctor who administered anaesthetic. *Brossard v. K.*, 200M410, 274NW241. See Dun. Dig. 7488.

In malpractice case, burden is upon plaintiff to show that gauze pack remained in plaintiff's body because of defendant's negligence. Id. See Dun. Dig. 7491.

Where a person is injured by wrong or neglect of another, and is not himself negligent in selection of a medical attendant, wrongdoer is liable for all proximate results of his own act, although consequences of injury would have been less serious if medical attendant had exercised proper professional skill. *Ahlsted v. H.*, 201M 82, 275NW404. See Dun. Dig. 7493.

Recovery cannot be had in an action for malpractice for technical assault upon grounds that patient did not consent to treatment administered by physician and surgeon, where upon trial negligence was only ground of recovery asserted, and right of recovery for such assault and battery was asserted for first time on motion for new trial. *Nelson v. N.*, 201M505, 276NW801. See Dun. Dig. 7488.

A physician and surgeon is not liable for injuries unavoidably resulting in spite of exercise of due care. Id.

In malpractice case held that a finding of negligence would not be justified as inference of fact under doctrine of *res ipsa loquitur*. *Nelson v. N.*, 201M505, 276NW801. See Dun. Dig. 7491.

Where administration of a hypodermoclysis was followed by necrosis of tissue into which solution was introduced, jury could not infer from fact that necrosis occurred that defendant used a solution other than normal saline solution. *Collings v. N.*, 202M139, 277NW 910. See Dun. Dig. 7491.

Negligence will not be presumed from fact that treatment by physician does not result in a cure. Id.

Mere fact injection of a solution of oxycyanide of mercury in treatment of cataract caused excessive reaction or bad results to particular person did not prove that physician or pharmacist of clinic was negligent. *Cassidy v. M.*, 285NW889. See Dun. Dig. 7496.

Prisoners in penitentiary should not be requested or compelled to waive negligence of doctor or surgeon as condition of treatment. *Op. Atty. Gen.* (341h), Nov. 20, 1934.

Notice in proceedings to revoke license of physician may be served upon him in a penitentiary in another state. *Op. Atty. Gen.* (303a-7), Dec. 29, 1934.

It is unlawful for a fraternal corporation to employ a doctor of medicine and an osteopath for treatment of members on a salary basis, or on basis of percentage of dues paid by members, money being equally divided between the two practitioners, and the practitioners are guilty of misconduct. *Op. Atty. Gen.* (303), August 8, 1939.

Liability of master for malpractice of doctor employed to treat servant. 18MinnLawRev479.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### 5712. Duty of secretary—Money how paid—etc.

The compensation of the secretary-treasurer and his stenographer or assistant is within the control of the commission of administration and finance under §53-7 herein. *Op. Atty. Gen.*, Oct. 16, 1929.

Opinion of June 28 with respect to reduction of salaries under Laws 1933, c. 413, §37, applies to secretary of board. *Op. Atty. Gen.*, June 29, 1933.

**5718. Licensing of itinerant physicians by state board.**

Physician who maintains two offices is not an itinerant physician. Op. Atty. Gen. (303c-10), Oct. 5, 1936.

**5714. Offenses.**

Conviction of gross misdemeanor under this section may be shown as affecting weight of testimony of a witness under §9948. *Brase v. W.*, 192M304, 256NW176. See Dun. Dig. 10349.

**5717. Practicing without license—Penalty.**

Naturopath resorting to natural remedies held unlawfully engaged in practice of medicine. *State v. State Board of Examiners*, 189M1, 250NW353. See Dun. Dig. 7483.

Layman conducting "health audit" for a fee for which he furnished subscribers with results of urinalyses and blood pressure tests passed on from pathologist and advised as to diet, exercise and habits was practicing medicine unlawfully. *Granger v. A.*, 190M23, 250NW722. See Dun. Dig. 7483.

A chiropractor cannot prescribe foods for purpose of correcting physical ailments or to cure a disease. Op. Atty. Gen. (535a), Nov. 16, 1935.

**5718. Physicians and surgeons prohibited from splitting fees.**

It is unlawful for a fraternal corporation to employ a doctor of medicine and an osteopath for treatment of members on a salary basis, or on basis of percentage of dues paid by members, money being equally divided between the two practitioners, and the practitioners are guilty of misconduct. Op. Atty. Gen. (303), August 8, 1939.

**5720. Revocation of license.**

Board has no power to suspend a license. Op. Atty. Gen., Aug. 23, 1929.

**MIDWIVES**

**5722. Midwifery licenses.**

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**CHIROPRACTORS**

**5725. Definition.**

Chiropractor cannot practice chiropody as defined by §5769. Op. Atty. Gen., Sept. 16, 1929.

**5729. Examination of applicants.**

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5730. Renewal fee—Fees to be paid to state treasurer—Report.**

Board cannot use funds to send representative to Chiropractic Congress. Op. Atty. Gen., Aug. 9, 1929.

Board may accept delinquent fees without reexamination. Op. Atty. Gen. (535a), Sept. 17, 1934.

(c).

Necessary auto parking expense is valid claim. Op. Atty. Gen. (535b), Nov. 24, 1934.

**5731. Recording of licenses—Rules and regulations—Chiropractics not practice of medicine, surgery, or osteopathy.**

A chiropractor cannot prescribe foods for purpose of correcting physical ailments or to cure a disease. Op. Atty. Gen. (535a), Nov. 16, 1935.

A public hospital supported by taxation cannot refuse a licensed chiropractor or osteopath right to take patient into hospital. Op. Atty. Gen. (1001a), May 25, 1939.

**OSTEOPATHY**

**5736. Practice of osteopathy—Licenses—Penalties. Extent of practice of osteopaths.** Op. Atty. Gen., Aug. 14, 1929.

Welfare board may retain osteopaths for osteopathic services to relief clients, but treatments given and services rendered must be in strict accordance with laws defining duties and authority of an osteopath. Op. Atty. Gen. (125a-64), Apr. 11, 1938.

**5737. Application for license—Examination—Fees. Reciprocal and retaliatory legislation.** 21MinnLawRev 371.

**NURSES**

**5741. Registration.**

Minnesota state registered nurses association has authority to receive relief funds from American nurses association for exclusive purpose of distributing relief to nurses. Op. Atty. Gen., June 23, 1933.

**5743. Term—Bond—Oath.**

Filing of bonds by all members is necessary in order to qualify for office. Op. Atty. Gen. (980a-8), May 4, 1937.

**5745. Compensation of board of Nurses Examiners.**

—Each member of said board, except the secretary, shall receive a compensation of not more than \$10.00 per day for each day of actual service, and actual expenses incurred in attending the meetings of the board, and examinations given by said board, which actual expenses shall include meals, lodging and travel, only. And in addition to the foregoing compensation and expenses each member of the board, except the secretary, shall be allowed such fee or fees for examining, marking and grading examination papers of applicants for registration as the said board shall deem reasonable, not to exceed, however, the sum of 40 cents for each paper so examined, marked and graded. Such board may also incur and pay all necessary expenses for office help and office expenses. Said board may fix the salary of its secretary and the educational director. Such salaries, compensation and expenses shall be paid out of any moneys in the hands of the state treasurer to the credit of said board upon the order of the secretary of the board. This act shall be subject to the provisions of Chapter 426, General Laws 1925 [§§53-1 to 53-52]. ('07, c. 153, §5; G. S. '13, §5003; '23 c. 148, §3; Apr. 12, 1929, c. 173.)

Boards may visit hospitals and meet outside city of St. Paul, and they may be treated as regular meetings as respects per diem, but expenses of meetings outside city of St. Paul must be paid by the members themselves or by the hospitals they visit. Op. Atty. Gen. (905h), Feb. 8, 1935.

**5747. Examinations—Notices—Fee—Qualifications.**

—Said board shall hold public examination at least once in each year at such times and places as it may determine, and notice of the time and place of such examination shall be given by a publication thereof at least ten days before such examination, in a daily newspaper published at the capital of the state, and said board may give such other notice as it deems advisable. Any person desiring to obtain a certificate of registration under this act shall make application to said board therefor, and shall pay to the treasurer of said board an examination fee of \$15, and shall present himself or herself at the next regular meeting of said board for examination of applicants, and upon said board being satisfied that the applicant possesses the following qualifications:

- (1) Is of the age of twenty-one years or over,
- (2) Is of good moral character,
- (3) As to any applicant who presents himself or herself for examination on and after September 1, 1929, that such applicant has received an education equivalent to one year of high school, and as to any applicant who presents himself or herself for examination on and after September 1, 1935, that such applicant has received an education equivalent to two years of high school, provided, however, that the provisions of this subdivision shall not apply to those who have entered a school of nursing prior to September 1, 1929, but as to those persons the provisions of this subdivision as it stood prior to the amendment thereof shall remain applicable, and

(4) Has graduated, or is within three months of graduating from a school of nursing connected with a general hospital where three years of training, with a systematic course of instruction is given; or has graduated, or is within three months of graduation from a school of nursing in connection with a hospital of good standing supplying a systematic three years' training corresponding to the above standards, which training may be obtained in two or more schools of nursing, said board shall proceed to examine said applicant in both theoretical and practical nursing and upon such applicant passing said examination to the satisfaction of said board, said board shall enter said applicant's name in the register, hereinafter provided for, and shall issue to said person a certificate of registration authorizing said person to practice the profession of nursing as a registered

nurse, provided, however, that any applicant who prior to the completion of the three year course of training required by this act passes said examination to the satisfaction of the board must, before he or she shall be granted a certificate of registration as a registered nurse present to the board satisfactory evidence that he or she has completed the full three years of training as required by this act. ('07, c. 153, §7; G. S. '13, §5005; '23, c. 148, §5; Apr. 15, 1929, c. 193.)

Under this section as amended by Laws 1929, c. 193, one who has passed the state board examination prior to completion of a three-year course of training is not entitled to a certificate of registration until she has completed the three years of training, it not being necessary or proper to issue a certificate to her and then revoke it. Op. Atty. Gen., July 6, 1930.

State hospital at Rochester could not legally grant a three-year diploma for nursing dated at a time when three-year course was not yet established, though student took up post-graduate course at that time, but could grant a diploma dated after three-year course was established if she had actually received training prescribed in such course. Op. Atty. Gen., Dec. 6, 1933.

Course of instruction is to be determined by board of examiners. Op. Atty. Gen. (905n), Dec. 27, 1935.

Board does not have authority to grant registration, either with or without post-graduate work, to graduates of two or three year courses in schools of nursing that were not accredited. Op. Atty. Gen. (905d), Dec. 23, 1933.

(4).

Applicant must attend school of nursing connected with hospital. Op. Atty. Gen. (905e), Apr. 1, 1935.

**5751. Applicants registered in other states.**

It is within the discretion of the board to require an out-of-state applicant to take a post-graduate course, if it believes such course is necessary to render the training of the applicant equivalent to a three years' course of training as set forth in §5747. Op. Atty. Gen. (905d), July 23, 1934.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5756-1. Registration of nurses in certain cases.—**

Any nurse who graduated prior to January 1, 1918, and has had fifteen (15) years or more of actual experience in nursing, and who has been employed under civil service regulations for fifteen (15) years or more as such nurse by the Board of Education of any city of the first class; who shall on or before July 1, 1935, make application and produce to the Board of Examiners of Nurses satisfactory evidence verified by the oath of the applicant that the applicant is a legal resident of this state and a graduate of a school or schools of nursing, giving a course in nursing of not less than two (2) years shall be permitted to register and practice the profession of nursing without examination upon payment of the registration fee. (Act Apr. 5, 1935, c. 127.)

**DENTISTS**

Sections 5757 to 5760, herein, are valid. 47SupCt122.

**5757. [Repealed.]**

Repealed Apr. 1, 1935, c. 95, §16, effective July 1, 1935.

**5758. [Repealed.]**

See note under §5757.

Board is without authority to create office of assistant secretary, but this does not mean that board may not incur such expenses as may be necessary within limit of funds. Op. Atty. Gen., Jan. 2, 1930.

While there is no authority to appoint an assistant secretary at a salary in addition to that named in this section, there is no reason why the board may not incur such expense as may be necessary within the limit of the funds provided. Op. Atty. Gen., Jan. 2, 1930, Jan. 20, 1930.

Board members are not entitled to charge a flat rate of \$5 per day for meals and expenses. Op. Atty. Gen., Jan. 22, 1932.

Members of board were entitled to compensation on Sunday if actually engaged in the performance of their official duties, but not if resting from their labors. Op. Atty. Gen., Jan. 22, 1932.

Opinion of attorney general of June 28, applies to secretary with regard to reduction of salary under Laws 1933, c. 413, §37. Op. Atty. Gen., June 29, 1933.

**5759. [Repealed.]**

See note under §5757.

Jury held warranted in awarding damages against a dentist without testimony of medical experts, where instrument used to polish and trim bridge slipped and cut tissues at base of tongue. Ellering v. G., 189M68, 248NW330. See Dun. Dig. 7486a, 7488, 7496(26).

**5760. [Repealed.]**

See note under §5757.

Fee paid by one applying to take dental examination may not be refunded, though applicant leaves state and does not attend examination. Op. Atty. Gen., Mar. 1, 1933.

**5761. [Repealed].**

See §5763-2 herein.

It is mandatory that the board revoke license where fee is not paid. Op. Atty. Gen., Apr. 18, 1929.

Dental board must send out notices when dues become due. Op. Atty. Gen., Sept. 6, 1933.

**5762. [Repealed.]**

See note under §5757.

**5762-1. State Board of Dental Examiners created.**

—There is hereby created a State Board of Dental Examiners (hereinafter called the Board) whose duty it shall be to carry out the purposes and enforce the provisions of this act. Said Board shall consist of five qualified resident dentists appointed by the Governor, within 60 days after this act shall take effect, in the manner hereinafter prescribed. The terms of office of the members first appointed shall begin when they are appointed and qualify and shall continue thereafter for the following periods: two members until October 1, 1936; two members until October 1, 1937; one member until October 1, 1938. Upon the expiration of such terms respectively, the Governor shall appoint a successor to the member whose term expires, for a term of three years and until his successor shall have qualified. For each of the above terms of the first Board to be appointed hereunder, the Minnesota State Dental Association shall recommend to the Governor not less than two dentists qualified to serve on said Board and the Governor may make the appointment for each term from the list of persons so recommended. Each year thereafter said Minnesota State Dental Association, at least 90 days prior to the expiration of the term or terms expiring in such year, shall recommend to the Governor not less than two dentists, for each term, qualified to serve on said Board, and from the list of persons so recommended the Governor may appoint one member to said Board for each of said terms of three years, said appointment or appointments however, to be made within 30 days after the expiration of said term or terms. Within 60 days after the occurrence of any vacancy in said Board, the said Minnesota State Dental Association shall recommend to the Governor not less than two dentists qualified to serve on said Board, and from the list of persons so recommended the Governor, within 30 days after receiving such list of persons, may appoint one member to said Board for the unexpired term occasioned by such vacancy, and any appointment to fill a vacancy shall be made within 90 days after the occurrence of such vacancy. Provided however, that each Board member shall have been lawfully in active practice in this state for five years immediately preceding his appointment; and no Board member shall serve more than two consecutive terms. The members of the State Board of Dental Examiners heretofore appointed and now holding office shall continue in office until the appointment and qualification of the members of such Board as herein provided. (Act Apr. 1, 1935, c. 95, §1.)

Members of board continue in office upon expiration of their terms until appointment and qualification of new member. Op. Atty. Gen. (139b), Jan. 12, 1938.

There is no distinction between short terms and long terms, and one serving two consecutive terms is not eligible for reappointment. Op. Atty. Gen. (139B), July 24, 1939.

**5762-2. Board—officers—salaries and expenses.—**

The Board shall elect from its members a president, vice-president, and a secretary-treasurer. The Board shall have a common seal. The Board shall hold two regular meetings each year at times to be fixed by the Board and special meetings at such other times as may be necessary, and as the Board may determine. All meetings shall be held at such places within the State of Minnesota as the Board shall determine. Out of the funds coming into the possession

of said Board, the members thereof shall receive as compensation the sum of ten dollars per day and necessary traveling expenses for each day actually engaged in the duties of their offices. The secretary-treasurer shall, in addition thereto, be paid a salary of not to exceed \$1200.00 per year, the amount of said salary to be set by resolution of the Board, which shall be in full for all secretarial, clerical and stenographic services for said Board. All fees received by the State Board of Dental Examiners under this act shall be paid to the secretary-treasurer thereof who shall deposit the same each month with the State Treasurer, the said fees to be kept in a separate fund for the sole use and under the sole control of said Board in carrying out the purposes of this act. Payments out of said fund shall be made only upon written orders issued and signed by the president of said Board and the secretary-treasurer thereof. No expense shall be incurred by said Board in excess of the revenue derived from such fees. The president and the secretary-treasurer of the Board shall give a bond in the amount of \$10,000.00 and in form to be approved by the Attorney General and conditioned for the faithful discharge of their official duties respectively. Before January 15th in each year the Board shall report its proceedings and the items of its receipts and disbursements to the Governor of the State of Minnesota. The Board shall have the power to expend the necessary funds for its offices and furniture, fixtures and supplies. The Board in its discretion may affiliate with the National Association of Dental Examiners, as an active member and pay regular annual dues to said Association and may send a member of the Board as a delegate to the meeting of the said National Association of Dental Examiners. Such delegate may receive the per diem above provided for the time spent in attending such meetings and reimbursement for actual and necessary traveling expenses.

In all matters pending before it, the Board shall have the power to compel the attendance of witnesses, the production of all necessary papers, books, records, documentary evidence and materials, and any member of the Board may in such matters administer an oath to witnesses or take their affirmation. If any person shall fail or refuse to appear or testify regarding any manner about which he may be lawfully questioned, or to produce any papers, books, records, documentary evidence or materials in the matter to be heard, after having been required by order or subpoena of the Board so to do, any judge of the District Court in any county of the state, on application of the Board 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.

The Board shall have the power to make such rules and regulations as are reasonably necessary to carry out and make effective the provisions and purposes of this act. (Act Apr. 1, 1935, c. 95, §2.)

**5762-3. Who may practice.**—Every person shall be deemed to be practicing dentistry within the meaning of this act: who is a manager, proprietor, operator or conductor of a place where the practice of dentistry is carried on, or who for a fee, gift, compensation or reward, or in expectation thereof, paid or to be paid either to himself or to another person, or who gratuitously performs or holds himself out to the public in any manner that he will perform dental operations of any kind, or who diagnoses or treats disease, lesions, malocclusion or mal-position of the human teeth or jaw mechanically or medically, or by the use of x-ray, or who attempts to correct mal-positions thereof, or who attempts to perform any operation incident to the replacement of the teeth, or who uses the word "Dentist," "Dental Surgeon," the letters "D.D.S.," "D.M.D.," or any other letters or titles in connection with his name which in any way represent him as being engaged in the practice of dentistry.

Provided however, that this section:

(1) Shall not apply to the construction, making alteration or repairing of bridges, crowns, dentures, or other prosthetic appliances or orthodontic appliances when the casts or impressions for such work have been made or taken by a licensed dentist; provided however, a written authorization signed by a licensed dentist must accompany the order for such work or such work must be performed in the office of a licensed dentist under his direct supervision. The burden of proving such written authorization or direct supervision shall be upon the person charged with the violation of this act.

(2) Shall not apply to students enrolled in and regularly attending any dental college recognized by the State Board of Dental Examiners, provided their acts are done in said dental college and under the direct supervision of their instructor.

(3) Shall not apply to a duly licensed physician and surgeon unless he practices dentistry as a specialty.

(4) Shall not apply to licensed or registered dentists of another state temporarily operating a clinic under the auspices of a duly organized and reputable dental college or reputable dental society, or to one lecturing before a reputable society composed exclusively of dentists.

(5) Shall not apply to licensed dental hygienists in the performance of their duties as provided by law.

(6) Shall not apply to the practice of dentistry by full time dentists in the discharge of their official duties in the United States Army, the United States Navy, the United States Public Health Service, or the United States Veterans' Bureau.

(7) Shall not apply to any person who ministers or treats the sick or suffering or who treats for the purpose of preventing sickness or suffering by mental or spiritual means exclusively. (Act Apr. 1, 1935, c. 95, §3.)

This section does not prevent a dental supply house from hanging out his sign over the sidewalk. Op. Atty. Gen. (139), July 13, 1935.

**5762-4. Licenses—examinations.**—A person not already a licensed dentist of the state desiring to practice dentistry therein, shall apply to the secretary-treasurer of the Board for examination and pay a fee of \$25.00 for the first examination and \$25.00 for each subsequent examination which in no case shall be refunded. At the next regular meeting he may present himself for examination and produce his diploma from some dental college of good standing, of which standing the Board shall be the judge, also satisfactory evidence showing that the applicant is of good moral character. Provided, however, that every applicant for a license to practice dentistry whether by examination or reciprocity, shall produce evidence satisfactory to the Board that he is a citizen of the United States. The Board shall give the applicant such an elementary examination as to thoroughly test his fitness for the practice and include therein the subjects of anatomy, physiology, chemistry, materia medica, therapeutics, metallurgy, histology, pathology, and operative surgical and mechanical dentistry; and the applicant shall be required to demonstrate his skill in operative and mechanical dentistry. If the applicant successfully passes the examination, he shall be registered by the Board as a licensed dentist, and supplied with a license signed by all members of the Board of Dental Examiners.

Provided, that any dentist who is lawfully practicing dentistry in another state having and maintaining an equal standard of laws regulating the practice of dentistry with this state, including reciprocity provisions with this state, and is a reputable dentist of good moral character and is desirous of removing to this state and deposits in person with the Board of Dental Examiners a certificate from the examining board of the state in which he is registered, certifying to the fact of his registration and that he is of good moral character, and professional attainments, and upon payment of a fee of \$50.00 may, at the

discretion of the Board, be granted a license to practice in this state without further theoretical examination.

Provided further that the Board may in its discretion waive the theoretical examination as to the holder of a certificate of qualification from the National Board of Dental Examiners upon the presentation of said certificate from the National Board of Dental Examiners, the said applicant and holder of such certificate having been at the time of said application the lawful possessor of a diploma from a dental college in good standing of which the Board shall be the judge, and upon the furnishing of satisfactory proof of good moral character and upon the payment of a fee of \$50.00.

The Board may by order suspend or revoke, in the manner hereinafter provided, any license issued heretofore or hereunder upon any of the following grounds:

1. Fraud or deception in connection with the securing of such license;
2. Conviction of the holder in any court of a felony;
3. Conviction of the holder in any court of an offense involving moral turpitude;
4. Habitual indulgence in the use of narcotics or intoxicating liquors;
5. Conduct unbecoming a person licensed to practice dentistry or contrary to the best interests of the public;
6. Gross immorality;
7. Employing, assisting or enabling in any manner an unlicensed person to practice dentistry;
8. Violation of any of the provisions of this act;

Provided that before the Board shall order any such suspension or revocation it shall on its own motion cause an investigation to be made and a citation to issue under the seal of the Board and signed by the Secretary-treasurer requiring the holder to show cause at a certain date why his license should not be suspended or revoked on the grounds specified therein; the holder of such license shall have 20 days' notice of the hearing and be entitled to be represented by an attorney; a certified copy of the conviction of any dentist shall be conclusive evidence as to the conviction in any proceeding before the Board. A stenographic record shall be kept of all such proceedings. The action of the Board in suspending or revoking a license hereunder shall be subject to review by a writ of certiorari brought in the District Court of Ramsey County. The action of the Board shall stand until otherwise directed by the District Court or by the Supreme Court of the State of Minnesota upon appeal.

Any dentist whose license has been suspended or revoked may be reinstated or a new license issued to him, as the case may be, when in the discretion of the Board, such action is warranted, provided such dentist shall pay all costs of the proceedings resulting in his suspension or revocation of license and reinstatement or new license and in addition thereto a fee of \$25.00.

The secretary-treasurer of the Board shall notify the Secretary of State of all licenses issued, suspended or revoked within ten days after issuance, suspension or revocation. Said names so filed with the Secretary of State shall be listed by the latter in a book kept for that purpose. (Act Apr. 1, 1935, c. 95, §4.)

Licenses must be signed by all five members of board, including member whose term has expired but whose position has not been filled by appointment by governor. Op. Atty. Gen. (139b), Jan. 12, 1938.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5762-5. Annual registration fee.**—On or before the first day of May in each year every licensed registered dentist shall pay to the Board of Dental Examiners an annual registration fee of two dollars, and in default of such payment the Board may, upon hearing and upon 30 days notice revoke the license of the dentist in default, but the payment of such fee on or before the date of hearing, with an additional sum of

five dollars shall excuse the default. The Board may collect such fee by suit. At least 30 days before said May 1st written notice duly signed by the president or secretary-treasurer of the Board stating the amount and due date of said fee shall be sent to each such licensed dentist.

Every licensed dentist upon changing his place of business shall, within ten days thereafter furnish the secretary-treasurer of the Board of Dental Examiners with his new address.

In case of a lost or destroyed license, and upon satisfactory proof of the loss or destruction thereof being furnished to the Board, the latter may issue a duplicate license, charging a fee therefor of two dollars. (Act Apr. 1, 1935, c. 95, §5.)

Failure to dentist to pay annual fee does not automatically deprive him of right to practice, but he must have his license revoked. Op. Atty. Gen. (303c-10(a)), May 21, 1936.

**5762-6. Certain acts unlawful.**—It shall be unlawful for any person or persons to practice dentistry under the name of a corporation, company, association or trade name; or under any name except his or her own proper name which shall be the name used in his or her license as issued by the State Board of Dental Examiners; or to conduct, maintain, operate, own or provide a dental office in the State of Minnesota either directly or indirectly, or by his or her agents or employees or for such person or persons to hold themselves out to the public directly or indirectly, or through agents or employees, as soliciting patronage or as being qualified to, practice dentistry in this State or to operate, manage or be employed in any room, rooms or office where dental service is rendered or contracted for, under the name of any corporation, company, association or trade name; provided, however, that any person or persons now practicing dentistry under any corporation, company, association or trade name may use his, her, or their personal names as such successor to the name now used until December 31, 1936, after which date the use of all corporation, company, association or trade names shall be discontinued, provided further that the provisions of this section shall not apply to any licensee who is an instructor in or under the University of Minnesota, or any other school of Dentistry in the State of Minnesota recognized by the State Board of Dental Examiners. Every person violating this section shall be guilty of a gross misdemeanor. (Act Apr. 1, 1935, c. 95, §6.)

Only a stockholder may use the designation herein provided, but the proper person to use the designation would have to be made from the stockholders. Op. Atty. Gen. (139), July 13, 1935.

**5762-7. Corporations not to practice dentistry.**—No corporation shall practice dentistry or engage therein, or hold itself out as being entitled to practice dentistry, or furnish dental services or dentists, or advertise under or assume the title of dentist or dental surgeon or equivalent title or furnish dental advice, or advertise or hold itself out with any other person or alone, that it has or owns a dental office or can furnish dental service, dentists or dental surgeons or solicit through itself, or its agents, officers, employees, directors or trustees, dental patronage for any dentist or dental surgeon. Any corporation violating the provisions of this section shall be guilty of a gross misdemeanor, and shall be fined not more than \$1,000.00 for each offense, and each day that this act is violated shall be considered a separate offense. (Act Apr. 1, 1935, c. 95, §7.)

**5762-8. Unlawful advertising prohibited.**—It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements as to the skill or method of practice of any person or operator in the practice of dentistry; or, in any way to advertise to practice dentistry without causing pain; or to advertise in any manner with a view of deceiving the public, or in any way that will tend to deceive or defraud the public; or to claim superiority over other dental

practitioners; or to publish reports of cases or certificates of same in any advertising media; or to advertise as using any anaesthetic, drug formula, material, medicine, method or system; or to advertise free dental services or examination; or to advertise any amount as a price or fee for the service of services of any person engaged in the practice of dentistry, or for any material or materials whatsoever used or to be used; or to employ "cappers" or "steerers" to obtain patronage or to exhibit or use specimens of dental work, posters, or any other media calling attention of the public to any person engaged in the practice of dentistry; or to give a public demonstration of skill or methods of practicing dentistry at any place other than his office where he is known to be regularly engaged in the practice of his profession; and every person committing an offense against any of the provisions of this section shall be guilty of a gross misdemeanor; provided, that any licensed and registered dentist may announce by way of a professional card containing only the name, title, degree, office location, office hours, phone number, and residence address and phone number, if desired, and if he limits his practice to a specialty he may announce it, but such card shall not be greater in size than eight column inches, and such information may be inserted in public print when not more than two columns in width and four inches in depth; or announce his change or place of business, absence from; or return to business in the same manner; or issue appointment cards to his patients, when the information thereon is limited to matter pertaining to the time and place of appointment and that permitted on the professional card; or display the name of the licensee, on the premises where engaged in the profession, (upon the windows thereof and by a door plate or name on office directory when the information is limited to that of the professional card. Provided,) that the name and title of the registrant shall not be displayed in lettering larger than seven inches. (Act Apr. 1, 1935, c. 95, §8.)

Section prohibits advertising by dentists in any manner whatsoever, except as expressly allowed by proviso, and advertisement announcing both a general and specialized practice, was a violation. *Gullings v. S.*, 200M115, 273NW 703. See Dun. Dig. 7486.

Dentists may use a sign suspended against the glass and need not paint the sign on the window. *Op. Atty. Gen.* (139), July 13, 1935.

Dentists may join together and maintain building directory where the owner of the building does not maintain one. *Id.*

Dentists do not have a right to allow signs larger than seven inches now outside of buildings or overhanging sidewalks to remain there. *Id.*

Act applies only to persons engaged in practice of dentistry and does not prohibit a dental supply house from advertising materials. *Id.*

Word "specialty" is used in its natural sense and legislature did not intend that it take in the general practice nor any dentist who does not limit his practice to a specialty. *Op. Atty. Gen.* (139m), Sept. 24, 1935.

A dentist may not display signs on outside of building whether attached to building or overhanging street or sidewalk. *Id.*

Recall cards, which are strictly limited to reminding patients who have previously had work done by dentist that it is time for further examination of teeth, and briefly advising them of importance of so doing, does not violate statute. *Op. Atty. Gen.* (139m), March 13, 1939.

**5762-9. Exempt from jury duty.**—All persons now authorized to practice dentistry in this State and those who may be hereafter authorized under the provisions of this act shall be exempt from service as jurors in all of the courts of the State during the continuance of the practice of their profession. (Act Apr. 1, 1935, c. 95, §9.)

**5762-10. Violation a gross misdemeanor.**—Every person who shall practice or attempt to practice dentistry in this State without being licensed or without being registered for that purpose or who violates any of the provisions of this act for which no specific penalty is provided herein, shall be guilty of a gross misdemeanor, and shall upon conviction be punished by a fine of not more than \$1000.00 or by imprisonment in the county jail for not more than one year,

or by both such fine and imprisonment. The Board of Dental Examiners may, when it deems best for the enforcement of this Section, and in making investigations, and in conducting hearings relative to the suspension or revocation of licensing, employ such help as in its discretion is necessary including such attorney as may be designated by the Attorney General; the Board to fix and determine the compensation and period of service of every such person, including such attorney; all of such persons to be paid out of the funds of such Board. (Act Apr. 1, 1935, c. 95, §10.)

**5762-11. Certificate must be posted.**—Every practitioner of dentistry must display conspicuously in the dental office where he is practicing, his annual registration certificate. Every person who violates this section shall be guilty of a misdemeanor. (Act Apr. 1, 1935, c. 95, §11.)

**5762-12. Fraud in securing licenses.**—Every person implicated in employing fraud or deception in applying for or securing a license to practice dentistry or in registering annually under this act, shall be guilty of a gross misdemeanor. It shall be the duty of the Clerk of the Court wherein any conviction is had under this section, to file a certified copy thereof with the State Board of Dental Examiners, and thereupon the secretary-treasurer of said Board shall cancel such license or such certificate of registration as the case may be, upon the records of his office. For filing a certified copy of such conviction with the secretary-treasurer of the State Board of Dental Examiners, the Clerk of Court shall charge a fee of one dollar. (Act Apr. 1, 1935, c. 95, §12.)

**5762-13. Defenses.**—In the prosecution of any person for violation of this act it shall not be necessary to allege or prove want of a valid license to practice dentistry, but such matter shall be a matter of defense to be established by the defendant. (Act Apr. 1, 1935, c. 95, §13.)

**5762-14. May not divide fees.**—It shall be unlawful for any dentist to divide fees with or to promise to pay a part of his fee to, or to pay a commission to any dentist or any other person, who calls him in consultation or who sends patients to him for treatment, or operation, but nothing herein shall prevent licensed dentists from forming a bona fide partnership for the practice of dentistry, nor to the actual employment of a licensed dentist by another licensed dentist. Any person violating this section shall be guilty of a misdemeanor and shall be punished by a fine of not to exceed \$100.00, or imprisonment in the county jail not to exceed 90 days. (Act Apr. 1, 1935, c. 95, §14.)

This section does not prevent payment of a licensed dentist actually employed by another licensed dentist, either a straight commission or a minimum weekly salary bonus. *Op. Atty. Gen.* (139), July 13, 1935.

**5762-15. Provisions severable.**—The various provisions of this act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provisions hereof. (Act Apr. 1, 1935, c. 95, §15.)

**5762-16. Laws repealed.**—Mason's Minnesota Statutes of 1927, Sections 5757, 5758, 5759, 5760, 5762, as amended by Laws 1933, Chapter 8, and 5763 are hereby repealed and all moneys, property and property rights belonging to and under the control of the State Board of Dental Examiners referred to in said Sections, are hereby transferred and appropriated to the control and use of the Board hereunder, and for the purposes provided herein. (Act Apr. 1, 1935, c. 95, §16.)

**5762-17. Effective July 1, 1935.**—This act shall take effect and be in force from and after July 1st, 1935. (Act Apr. 1, 1935, c. 95, §17.)

**5763. [Repealed.]**

See note under §5757.

**5763-2. Inconsistent acts repealed.**—Section 5761 and all parts of acts insofar as the same are incon-

sistent herewith are hereby repealed. The various provisions of this Act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provisions hereof. (Act Mar. 4, 1931, c. 36, amending Laws 1927, c. 98.)

**5764 to 5767. [Repealed.]**

Repealed Mar. 29, 1935, c. 71, §6.

**5767-1. Dental Hygienists—examination—licenses.**

—Any woman of good moral character not already a licensed dental hygienist of the state, being a graduate of an accredited high school or its equivalent, who is a graduate of a training school for dental hygienists requiring a course of not less than two academic years, and approved by the Board of Dental Examiners, may upon payment of ten dollars be examined by said board on the subjects considered essential by it for a dental hygienist. Such examination may, in the discretion of the Board, be conducted by a part of the members of the Board. If the applicant, in the opinion of the Board, successfully passes said examination, she shall be registered and licensed as a dental hygienist. (Act Mar. 29, 1935, c. 71, §1.)

**5767-2. May perform certain services.**—Any licensed dentist, public institution or school authorities may employ such licensed dental hygienist. Such dental hygienist may remove lime deposits, accretions and stains from the exposed surfaces of the teeth, administer gas, ether, and general anesthesia, as applied to dentistry and make instrumental examination of the teeth for cavities, but shall not perform any other operation on the teeth or tissues of the mouth except that in a public institution or school she may make an oral examination and polish teeth. She may operate in the office of a licensed dentist but at all times under his direct supervision; or in any public institution or school, but at all such times under the general supervision of a licensed dentist.

The Board of Dental Examiners may suspend or revoke, with power to reinstate, the license of any licensed dentist who shall permit any dental hygienist, operating under his supervision, to perform any operation other than that permitted under the provisions of this section, and it may also suspend or revoke, with power of reinstatement, the license of any dental hygienist violating the provisions of this act, the procedure to be followed in the case of such suspension, revocation or reinstatement, shall be the same as that prescribed by law in the case of suspension, revocation or reinstatement of a licensed dentist. (Act Mar. 29, 1935, 71, §2.)

**5767-3. Registration Fees.**—(a) On or before the first day of May in each year every licensed dental hygienist shall pay to the Board of Dental Examiners a registration fee of one dollar and in default of such payment, the Board may upon hearing and upon 30 days' notice revoke the license of the hygienist in default; but the payment of such fee on or before the time of hearing, with an additional sum of five dollars, shall excuse the default. The Board may collect such fee by suit. At least 30 days before said May 1st written notice duly signed by the president or secretary-treasurer of the Board stating the amount and due date of said fee shall be sent to each such licensed dental hygienist.

(b) Such licensed hygienist must display conspicuously at the place of her employment her annual registration certificate.

(c) Every person violating this section shall be guilty of a misdemeanor. (Act Mar. 29, 1935, c. 71, §3.)

**5767-4. Applicants from other states.**—Any dental hygienist duly licensed to practice as such in another state having and maintaining an equal standard of laws regulating the practice of dental hygienists with this state, and who is of good moral character and is desirous of removing to this State, and deposits in person with the Board of Dental Examiners a certificate from the examining board of the state

in which she is licensed, certifying to the fact of her being licensed and that she is of good moral character and professional attainments, may upon the payment of a fee of \$20.00, at the discretion of the Board, be granted a license to practice in this state without further examination. As to any person so applying and who has been licensed in a state not maintaining an equal standard of laws with this state, the Board may license such persons upon the payment of the fee above provided for, furnishing the same evidence as to licensing, good moral character, and professional attainments, and passing such further examinations as the Board of Dental Examiners shall deem necessary. (Act Mar. 29, 1935, c. 71, §4.)

**5767-5. Provisions severable.**—The various provisions of this act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provisions hereof. (Act Mar. 29, 1935, c. 71, §5.)

**5767-6. Laws repealed.**—Mason's Minnesota Statutes of 1927, Sections 5764, 5765, 5766, as amended by Laws 1933, Chapter 8, and 5767 are hereby repealed. (Act Mar. 29, 1935, c. 71, §6.)

Sec. 7 of Act Mar. 29, 1935, cited, provides that the act shall take effect from its passage.

### CHIROPODY

**5768. State board of chiropody authorized.**

Board of chiropody cannot compel board of education of Minneapolis to grant recognition to chiropodist in matter of writing excuses for pupils from physical training. Op. Atty. Gen. (546), Nov. 2, 1937.

**5769. Definition of "chiropody."**—The definition of the word "chiropody" shall be held to be the diagnosis or medical, mechanical or surgical treatment of the ailments of the human hand or foot. It shall also include the fitting or recommending of appliances, devices or shoes for the correction or relief of minor foot ailments, except the amputation of the foot, hand, toes, fingers or the use of anaesthetics other than local. ('17, c. 382, §2; Apr. 24, 1935, c. 266, §1.)

It is lawful for a chiropodist to advertise his offices as a "foot clinic." Op. Atty. Gen., Feb. 23, 1933.

Cutting and trimming toe nails for a fee is not practice of chiropody unless the cutting or trimming is for purpose of treating a foot ailment. Op. Atty. Gen. (546d), May 12, 1938.

**5771. Application for registration of chiropodists—Fees.**—Application for registration shall be made upon blanks furnished by the board and shall be signed and sworn to by the applicant.

All fees received by the board shall, once a month, be paid by its secretary into the treasury of the state. (As amended Dec. 27, 1933, Ex. Ses., c. 27, §1; Apr. 24, 1935, c. 266, §2; Apr. 8, 1939, c. 160, §1.)

Sec. 2 of Act Dec. 27, 1933, cited, provides that the act shall take effect from its passage.

One practicing chiropody prior to Jan. 1, 1917, is not entitled to license without examination where he failed to apply for registration before July 1, 1917. Op. Atty. Gen. July 20, 1933.

**5772. Eligibility requirements—Fees—Examination—Designation of practitioners—Renewal of licenses.**

—Any person entitled to registration, who shall furnish the board with satisfactory proof that he is 21 years of age or over and of good moral character and who shall provide documentary evidence of preliminary education received prior to entering the study of chiropody equal to that required for completion of four years work of a first grade high school course and who shall present a diploma or certificate from a school of chiropody recognized by the board of chiropody examiners of this state, having a minimum requirement of at least three years' course of at least eight months each, shall, upon payment of a fee of \$25.00, be examined, and if found qualified, shall be registered and shall receive in testimony thereof a certificate signed by the chairman and secretary of the board.

An applicant who fails to pass an examination satisfactory to the board, and is therefore refused registration, shall be entitled, within one year after such

refusal, to a re-examination at a meeting of the board called for the examination of applicants, upon payment of an additional fee of \$2.00 for each such re-examination, but two such re-examinations shall exhaust his privilege under his original application.

Any person to whom a certificate of registration is granted under the provisions of this act, shall designate himself as a doctor of surgical chiropody.

Before the first of June in each year every registered chiropodist shall pay to the board a license renewal fee of \$5.00, and in default of such payment the board may, upon hearing and notice, revoke the registration of the chiropodist in default, but the payment of such fee on or before the time of hearing, together with a penalty of \$5.00, shall excuse the default. Such fee may also be collected by the board in a civil action. (As amended Apr. 24, 1935, c. 266, §3; Apr. 8, 1939, c. 160, §2.)

Whether one practicing chiropody at passage of act but failing to comply with priority statute is qualified to take examination is a question of fact and not law. Op. Atty. Gen., Dec. 21, 1933.

Applicant must be 21 years or over before he can take examination. Op. Atty. Gen., Feb. 18, 1934.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5774. False registration—Practice without license—Advertising as practitioner—Penalties.**—Any person who shall unlawfully obtain registration under this act, whether by false or untrue statements contained in his application to the board or by presenting to said board a fraudulent diploma, certificate or license or one fraudulently obtained, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment for not less than 30 days nor more than 90 days, and any person not being lawfully authorized to practice chiropody in this state and registered as aforesaid, who shall advertise as a chiropodist, in any form, or hold himself out to the public as a chiropodist, or who, not being duly licensed to practice medicine, osteopathy or chiropractic in this state shall offer to diagnose or treat the ailment of the human foot, or who shall diagnose or treat the ailments of the human foot by medicinal, mechanical or surgical means, shall be guilty of a misdemeanor and shall upon conviction thereof, for each offense be punished by a fine of not less than \$25.00 nor more than \$100.00, or by imprisonment for not less than 30 days nor more than 90 days; provided that the fitting or recommending of appliances, devices or shoes for the prevention, correction or relief of feet ailments or troubles by shoe dealers or others not holding themselves out to the public as chiropodists shall not be considered the practice of chiropody under the terms of this act.

It shall be unlawful for any person, firm or corporation to publish, directly or indirectly, or circulate any fraudulent, false or misleading statements as to the skill or method of practice of any person or operator in the practice of chiropody, or in any way to advertise chiropody as to be practiced without pain, or to advertise in any manner with a view of deceiving the public, or to claim superiority over other chiropodists, or to publish reports of cases or certificates of same in any advertising media, or to advertise as using any anesthetic, drug, formula, material, medicine, method or system, or to advertise free chiropody services or examinations, or to advertise any amount as a price or fee for the service of any person engaged in the practice of chiropody; provided, however, that any licensed and registered chiropodist may announce by way of a professional card containing only the name, title, degree, office location, office hours, phone number, and residence address and phone number, if desired, and if he limits his practice to a specialty he may announce it, but such card shall not be greater in size than eight column inches, and such information may be inserted in public print when not more than two columns in width and four inches in depth; outdoor or similar signs shall not exceed 12 by 18 inches and the text limited to the

above qualifications. It shall not be considered unprofessional or unlawful to conduct an educational campaign to give information as to the practice of chiropody, providing such campaign is first approved by the Minnesota State Board of Chiropody Examiners. Any person violating any of the provisions of this Section as it relates to advertising shall be guilty of a misdemeanor. (As amended Apr. 24, 1935, c. 266, §4; Apr. 8, 1939, c. 160, §3.)

It is not unlawful for a chiropodist who holds license in state to locate in another state but still have his name listed as having offices within state with another registered practitioner. Op. Atty. Gen., Feb. 23, 1933.

Person not licensed cannot treat foot ailments unless under direction of physician, osteopath, or chiropractor. Op. Atty. Gen. (546f), Dec. 10, 1937.

**5775. Evidence of practicing.**—It shall be deemed prima facie evidence of the practice of chiropody or of holding oneself out as a practitioner of chiropody within the meaning of this act, for any person to diagnose or treat in any manner the human hand or foot by medical, mechanical or surgical methods, or to use the title chiropodist or registered chiropodist or any other words, or letters which designate, or tend to designate to the public that the person so treating or holding himself out to treat, is a chiropodist, or who in manner shall publicly profess to practice or assume the duties incident to the practice of chiropody. ('17, c. 382, §8; Apr. 24, 1935, c. 266, §5.)

**5777. May refuse or revoke licenses.**—The board may, after hearing, refuse to issue a certificate to any person, or may revoke the certificate and cancel the registration of any person registered under the provisions of this act, who after investigation, shall be found by a majority vote of the board, guilty of grossly unprofessional and dishonest conduct. The words "unprofessional and dishonest conduct" shall be held to mean within the provisions of this act:

(a) The willing betrayal of a professional secret.

(b) Having professional connection with, or lending the use of one's name to an unregistered chiropodist or having professional connection with anyone who has been convicted in court of any criminal offense whatsoever.

(c) Being guilty of offenses involving moral turpitude, habitual intemperance, or being habitually addicted to the use of morphine, opium, cocaine or other drugs having a similar effect, or for using, selling or giving away any substance or compound containing alcohol or drugs for other than legal and legitimate purposes.

(d) Violation of any of the provisions of this act.

(As amended Apr. 8, 1939, c. 160, §5.)

Whether it is unlawful for a chiropodist to advertise his dead brother as having offices with him depends upon nature of advertising and whether public is deceived. Op. Atty. Gen., Feb. 23, 1933.

**5780. Registration of certificate by clerk of district court.**

Board may not compel practitioner to comply with this section, there being no penalties provided. Op. Atty. Gen., Feb. 23, 1933.

**5781. Compensation and expenses.**—Each member of the board shall receive ten dollars for every day actually spent in the performance of his duties in connection with the provisions of this act and the necessary traveling expenses actually incurred, not exceeding five cents per mile each way. The said compensation and traveling expenses and any incidental expenses necessarily incurred by the board or any members thereof, shall, if approved by the board, be paid from the treasury of the state, but only from the fees received under the provisions of this act and paid into the said treasury by the board. ('17, c. 382, §14; Apr. 24, 1935, c. 266, §6.)

**5782. Reciprocity.**—The board may accept the certificate of license of the board of registration and examination of any other state or territory or any foreign country whose standards of qualifications and requirements for practice are equivalent to those of

this state on payment of the required fee of \$100.00 with the endorsement of the chairman and secretary of the state board of chiropody examiners. ('17, c. 382, §15; Apr. 24, 1935, c. 266, §7; Apr. 8, 1939, c. 160, §4.)

### MASSAGE

#### 5784-1 to 5784-12. [Repealed].

Repealed by Laws 1929, c. 347, §21, post, §5784-33.

**5784-13. Definitions.**—As used in this act, the term "massage" shall mean the method, art or science of treating the human body for hygienic or remedial purposes exclusively, by rubbing, stroking, kneading, tapping or rolling the same with the hands, or by rubbing, stroking, kneading, tapping or rolling the body with any other agency or instrumentality for the purpose of relieving, alleviating and reducing affected parts thereof; the term "masseur" shall mean a male person and the term "masseuse" a female person who practices "massage" as herein defined; the term "Board" shall mean the State Board of Medical Examiners as the same now is or hereafter may be constituted by law; the term "license" shall mean a certificate issued by the Board authorizing the holder thereof to practice "massage" in this State. The phrase "accredited school" or "accredited institution" shall mean one approved by the board. The word "reducing" as used hereinbefore shall not be interpreted to include reducing a fracture or a dislocation. (Act Apr. 24, 1929, c. 347, §1.)

Bath parlor attendant need not be licensed under this act in order to give massages in ordinary course of business. Op. Atty. Gen., June 22, 1933.

**5784-14. What is massage.**—The practice of massage is hereby declared to be distinct from the practice of medicine, surgery, osteopathy, chiropractic or chiropody, and persons duly licensed in this state to practice medicine, surgery, osteopathy, chiropractic or chiropody, nurses who work solely under the direction of any such persons, athletic directors and trainers are hereby expressly excluded from the provisions of this act. It is further provided that beauty culturists, barbers and bath parlor attendants who do not give or hold themselves out to give massage treatments, as defined herein, other than is customarily given in such shops or places of business, for the purpose of beautification only, shall be exempt from the provisions of this act. (Act Apr. 24, 1929, c. 347, §2.)

**5784-15. Operators must be licensed.**—No person shall for or in expectation of any fee, gift, compensation or reward of any kind engage in, or hold himself out as being engaged in, the practice of massage within this state, without having a license therefor as provided in this act. (Act Apr. 24, 1929, c. 347, §3.)

**5784-16. State board of medical examiners to issue license.**—The Board shall issue licenses to practice massage only to persons qualified therefor under the provisions of this act after examination as herein provided, upon application in manner and form as prescribed by the Board and payment thereto of a fee of \$25.00; provided however that licenses may be renewed by the Board without examination upon application and payment of a renewal fee of \$3.00; and licenses issued pursuant to existing law and outstanding at the time of the passage of this act are hereby continued in force and effect until the same shall expire unless sooner revoked by the Board, as provided for in this act, and shall be renewed by the Board without examination upon application and payment of a renewal fee of \$3.00, except as in this act otherwise provided for; application for renewal of license as herein provided for shall be made to the Board on or before May 31st of each year, and shall be accompanied by the renewal fee of \$3.00; provided further that the Board in its discretion may without examination upon the payment of a fee of \$50.00

issue a license to any person qualified to practice massage in any other state or territory whose requirements for such practice are equivalent to the requirements of this state therefor. Licenses shall be in such form as the Board shall by rule prescribe, shall specify the name, residence and business location of the licensee and state that he is authorized to practice massage in the State of Minnesota; licenses shall bear the date of issuance and the date of expiration thereof and shall be signed by the President and Secretary-Treasurer of the Board and bear its official seal. All licenses shall expire on May 31st next and after the issuance thereof unless sooner revoked as herein provided. (Act Apr. 24, 1929, c. 347, §4; Apr. 24, 1935, c. 245.)

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5784-17. Qualifications of applicants.**—Any person of good moral character who is 21 years of age or over and has completed a course of study in an accredited high school or who has completed the equivalent of such course of study to the satisfaction of the Board, and in addition to these requirements has received a diploma or certificate of graduation from an accredited school of massage or in lieu of such diploma or certificate has received credits in the subjects of anatomy, physiology, dermatology, histology and massage from an accredited educational institution, shall be eligible for examination under the provisions of this act, otherwise he shall be ineligible therefor; and if upon such examination he shall have a general average of not less than 75% in the subjects in which he is examined and not less than 60% in any one of such subjects, he shall be qualified for a license hereunder, otherwise he shall be unqualified therefor. (Act Apr. 24, 1929, c. 347, §5.)

**5784-18. Board may employ assistants.**—The Board shall employ an expert assistant or assistants who shall serve at and during the pleasure of the Board, to assist in conducting examinations herein provided for under the Board's supervision and direction. Such expert assistant or assistants shall be citizens and residents of this state; provided further, that at least one of such expert assistants shall be skilled in the art and science of massage, who shall be duly licensed to practice massage in this state, and who shall have practiced massage therein for at least two years immediately preceding his employment. Such examinations shall be in the English language and shall be written, oral and/or practical as the Board may determine and shall embrace the subjects of anatomy, physiology, dermatology, histology and massage but shall be so limited in scope as to include only the minimum requirements for massage education as herein provided and shall not require education in medicine or surgery. Such examination shall be held on the third Wednesday in each of the months of January, April, June and October of each year, at the seat of government and at such other times and places as the Board may determine. (Act Apr. 24, 1929, c. 347, §6.)

**5784-19. Re-examinations.**—Any person refused a license for failure to pass an examination to the satisfaction of the Board shall be entitled to a re-examination at any time within six months after such refusal upon payment to the Board of an additional fee of \$5.00; provided that nothing in this act shall prevent any person from filing a new application at any time after one year from the date of his last application. (Act Apr. 24, 1929, c. 347, §7.)

**5784-20. Licenses must be recorded.**—Every person holding a license to practice massage under this act, shall, before commencing such practice in any county of this state, have such license recorded in the office of the Clerk of the District Court of such county and such Clerk shall in each case write or stamp thereon the date of such recording. The Clerk of the District Court shall keep in a book provided for

such purpose by the county and open to the public inspection, a complete list of such licenses recorded by him and his predecessors in office, including the date of the issuance thereof, the name of the license therein specified and the date of the recording thereof. For each such recording the Clerk of the District Court shall receive from the person named in the license a fee of \$1.00. After such recording the license shall be conspicuously displayed by the holder thereof in the office or place where he pursues the practice of massage. (Act Apr. 24, 1929, c. 347, §8.)

**5784-21. Board may suspend or revoke licenses—Cause.**—The Board may by order suspend, revoke or refuse to renew any license issued hereunder or heretofore and cause the cancellation and removal thereof from the records of the office of the Clerk of the District Court wherein the same is recorded upon the ground of: (a) fraud or deception in connection with the securing of such license; (b) habitual drunkenness or intemperance in the use of narcotics or stimulants; (c) conduct unbecoming to a person licensed to practice massage or inimical to the best interests of the public; (d) violation of any of the provisions of this act; (e) conviction of a crime involving moral turpitude; provided that before the Board shall order any such suspension, revocation or refusal to renew as herein provided for the holder thereof shall be entitled to a written statement of the charge against him and shall be accorded a hearing in person or by attorney before the Board, and be entitled to have witnesses in his behalf subpoenaed by the Board. In case of suspension or revocation of, or refusal to renew a license, the order of suspension or revocation or refusal to renew, as the case may be, shall forthwith be filed by the Board with the Clerk of the District Court of the County wherein such license is recorded and the clerk shall note such suspension, revocation or refusal to renew, on his record of such license. No license shall be issued to any person whose license has been revoked, nor to any person whose license the Board has refused to renew hereunder, until after the expiration of one year from the date of such revocation or refusal to renew; provided that any such person shall pay to the secretary-treasurer of the Board, the sum of \$25.00 upon issuance of a new license. (Act Apr. 24, 1929, c. 347, §9.)

**5784-22. Powers and duties of board.**—The Board shall have the power to provide for its offices and necessary furniture, fixtures and supplies and to appoint and employ, and at will to remove or discharge, such officers, agents, assistants, clerks and other employees as the Board may deem necessary for the performance of its duties and to fix their salaries and define their duties; and to prescribe rules and regulations for its own government and procedure; and to hold hearings in relation to any matter properly within its jurisdiction and prescribe rules and regulations for the conduct thereof, issue subpoenas for and compel the attendance of witnesses and the giving of testimony and the production of books, records, accounts, documents and papers; and any member of the Board may administer oath to witnesses or take their affirmation. If any person shall fail or refuse to appear or testify regarding that upon which he may be lawfully interrogated, or to produce any books, records, accounts, documents or papers material in the matter heard or to be heard by the Board, after having been lawfully required by order or subpoena of the Board so to do, any judge of the District Court in any county of the State, on application of the Board, 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. (Act Apr. 24, 1929, c. 347, §10.)

The "officers, agents, assistants, clerks and other employees" mentioned in this section are, with respect to compensation, within the control of the board of medical examiners within the limitation prescribed by §13 of this act, but the secretary and assistant secretary are con-

trolled by the reorganization act (Mason's Statutes, §53-7), and compensation may be increased or diminished by the commission of administration and finance. Op. Atty. Gen., Oct. 16, 1929.

State board of medical examiners is not subject to supervision and control of department of administration and finance with respect to employment of attorney at law to procure evidence or fixing compensation. Op. Atty. Gen., Oct. 24, 1933.

**5784-23. Duties of secretary-treasurer.**—The secretary-treasurer of the Board shall keep a record of all proceedings of the Board and a register of all applicants for examination, setting forth the name of such applicants, together with their addresses, ages, educational qualifications and the results of their examinations; he shall perform such other duties as may be required by law or by the Board. Such records and registers of the Board shall at all times be open to public inspection, and shall be prima facie evidence in all courts and legal proceedings within the State of matters therein recorded. (Act Apr. 24, 1929, c. 347, §11.)

**5784-24. Compensation.**—The compensation of each member of the Board shall be \$10.00 for each day actually spent in the performance of his duties together with actual necessary expenses paid or incurred by him in connection therewith. The compensation of persons employed by the Board shall be determined by the Board and in addition thereto their expenses necessarily paid or incurred in the performance of their duties in connection therewith, subject, however, to the approval of the board. (Act Apr. 24, 1929, c. 347, §12.)

**5784-25. Fees to be paid of secretary-treasurer—Bond.**—All fees and moneys payable under the provisions of this act shall be paid to the secretary-treasurer of the Board and he shall forthwith deposit the same with the state treasurer to be kept by him in a separate fund, which shall be under the control and for the use of the Board in the administration of this act. And the amount of such fund is hereby annually appropriated to said Board for the purpose of defraying its expenses in carrying out the provisions of this act. The compensation and expenses of members of the Board, herein provided for, and the compensation and expenses of all persons employed by the Board hereunder, shall be paid out of said fund; in addition such fund shall be available to and may be used by the Board to defray the expenses of keeping proper records and registers, furnishing licenses herein provided for, employing an inspector or inspectors for procuring evidence of any violation of this act, and aiding in the enforcement thereof, and for such other expenses and purposes as may be deemed necessary by the Board to carry out the purposes of this act; provided, however, that the expenditures of the Board, together with the obligations created or incurred thereby, shall at no time exceed the amount of the fund in the treasury available hereunder for the use of the Board. Payments out of said fund shall be made only upon written orders issued and signed by the secretary-treasurer of the Board. Said secretary-treasurer shall give bond to the state in such sum as the Board shall determine, with sureties approved by the Board, conditioned upon the faithful performance by him of the duties of his office and his accounting for all moneys of the Board in his custody or under his control as such secretary-treasurer. (Act Apr. 24, 1929, c. 347, §13.)

Compensation of "officers, agents, assistants, clerks and other employees" mentioned in §10 are to be determined by the board of medical examiners within the limitation of this section. Op. Atty. Gen., Oct. 16, 1929.

Department of administration and finance has no right to interfere with lawful discharge of duties of board by withholding vouchers drawn upon funds of board on deposit with state treasurer. Op. Atty. Gen. (303a-7), Nov. 10, 1936.

**5784-26. Not to use titles.**—No person licensed to practice massage under the provisions of this act shall attach to his name or in any way use the title of doctor, physician, surgeon, specialist, M.D., M.B., D.O.,

D.C., or any other word, abbreviation or title indicating or designed to indicate that he is engaged in the practice of healing as defined in Chapter 149, General Laws of 1927 [§§5705-1 to 5705-23], or any practice whatsoever other than massage, unless he is duly licensed for such practice within this state according to law. No person licensed under the provisions of this act to practice massage shall in, by or through any newspaper, magazine, directory, pamphlet, poster, card, circular, or other writing or publication or by any advertisement whatsoever, state or represent either directly or indirectly that he has cured, can cure, or guarantees to cure, or that he has successfully treated any disease, injury, defect, deformity, ailment or affliction whatsoever. (Act Apr. 24, 1929, c. 347, §14.)

**5784-27. Law not applicable.**—Chapter 149, General Laws of 1927 [§§5705-1 to 5705-23], shall not apply to persons licensed under this act so long as such persons confine their activities within the scope of such license. (Act Apr. 24, 1929, c. 347, §15.)

**5784-28. Prosecutions.**—In the prosecution of any person for violation of this act, it shall not be necessary to allege or prove want of a valid license to practice massage, as required by this act, but all such matters shall be matters of defense to be established by the accused. (Act Apr. 24, 1929, c. 347, §16.)

**5784-29. Violation a misdemeanor.**—Any person not hereinbefore excepted from the provisions of this act who shall engage or attempt to engage in the practice of massage, as in this act defined, or hold himself out as being engaged therein, in violation of this act, without a valid existing license to practice massage issued to him pursuant to the provisions of this act, shall be guilty of a gross misdemeanor. (Act Apr. 24, 1929, c. 347, §17.)

**5784-30. Violation a misdemeanor.**—Any person not hereinbefore excepted from the provisions of this act who shall engage or attempt to engage in the practice of massage as in this act defined or hold himself out as being engaged therein, without having recorded his license to practice massage in the manner herein provided, or without displaying his license to practice massage as herein provided, shall be guilty of a misdemeanor. (Act Apr. 24, 1929, c. 347, §18.)

**5784-31. Certain acts a gross misdemeanor.**—Any person implicated in employing, fraud or deception in applying for or securing a license to practice massage under this act, or in passing an examination therefor, shall be guilty of a gross misdemeanor. It shall be the duty of the Clerk of the District Court wherein any conviction is had under this section, to file a certified copy thereof with the secretary-treasurer of the Board and thereupon the secretary-treasurer of the Board shall cancel such license upon the records of his office and forthwith notify the respective clerks of the courts wherein such license is recorded, of such cancellation; and such clerks shall immediately note such cancellation on their respective records thereof. For filing a certified copy of any conviction as herein required, the clerk of the court shall charge a fee of One Dollar. (Act Apr. 24, 1929, c. 347, §19.)

**5784-32. Provisions severable.**—The various provisions of this act shall be severable and if any part or provisions shall be held to be invalid it shall not be held to invalidate any other part or provision hereof. (Act Apr. 24, 1929, c. 347, §20.)

**5784-33. Law repealed.**—Chapter 69, General Laws of 1927 [§§5784-1 to 5784-12], is hereby repealed and all moneys, property and property rights under the control of the State Board of Massage Examiners created thereby are hereby transferred, and appropriated to the control and use of the Board hereunder. (Act Apr. 24, 1929, c. 347, §21.)

## OPTOMETRISTS

**5785. State board of optometry—Terms.**—The state board of optometry shall consist of five qualified optometrists appointed by the governor, each for a term of three years, or such part thereof as will provide for the expiration of the terms of two members January 1st, 1930; two members January 1st, 1931, and one member January 1st, 1932, and until their successors qualify. Vacancies in such boards shall be filled by like appointments for unexpired terms. ('15, c. 127, §1; '25, c. 239; Apr. 27, 1929, c. 420, §1.)

Whether an optometrist should be classified as a member of a learned profession or not, his optometric work is within police power of state and subject to legislative regulations in interest of public health. *Williams v. M.*, 202M402, 278NW585.

**5786. Powers of Board.**—Said board of optometry shall have the power to make any rules and regulations and to do any and all things, not inconsistent with law, which it may deem necessary or expedient for the effective enforcement of this act or for the full and efficient performance of its duties thereunder. ('15, c. 127, §2; '25, c. 239; Apr. 27, 1929, c. 420, §2.)

If employer of optometrist in any respect violates optometry statutes, board should proceed against offending employer, and not innocent employee. *Williams v. M.*, 202M402, 278NW585.

Board cannot by rule make it *unprofessional conduct* to do what is impliedly lawful under this statute. *Id.*

Board of optometry has no authority to foster educational lectures for optometrists, advertise optometry and advise public on care of eyes, or conduct educational clinic for the benefit of the optometrists. *Op. Atty. Gen.* (329a), Sept. 7, 1934.

It is not duty of board to correct discriminatory practices on part of school nurses. *Op. Atty. Gen.* (329a), Aug. 29, 1934.

Board has no power to enact additional requirements but may only adopt administrative rules to assist in enforcing legislative provisions and duties. *Op. Atty. Gen.* (329a), Sept. 1, 1934.

Board may enforce law by giving warning to violator. *Op. Atty. Gen.* (329a), Dec. 13, 1937.

Board may require information regarding recording of certificate before renewing same. *Op. Atty. Gen.* (329b), Jan. 27, 1938.

**5788. Same—Compensation and expenses—etc.**

The board has authority to employ a secretary or investigator who may make recommendations to the board for the citation of persons violating the act, but without power in himself to initiate a proceeding. *Op. Atty. Gen.*, Apr. 7, 1930.

**5789. Who are optometrists.**—Any person shall be deemed to be practicing optometry within the meaning of this act who shall display a sign, such as an eye, a pair of eyes, a pair of glasses or spectacles, or who shall in any way advertise himself as an optometrist, or who shall employ any means for the measurement of the powers of vision or the adaptation of lenses or prisms for the aid thereof, or have in his possession testing appliances for the purpose of the measurement of the powers of vision, or diagnose any optical deficiency or deformity, visual or muscular anomaly of the human eye, or prescribe lenses, prisms or ocular exercises for the correction or the relief of same, or who holds himself out as being able to do so. It shall be unlawful for any person who is not licensed as an optometrist in this state to fit, sell or dispose of or to take, receive or solicit any order for the fitting, sale or disposition of any spectacles, eye glasses, or lenses for the correction of vision in any place within this state other than an established place of business wherein such spectacles, eye glasses or lenses are commonly sold and dealt in; and it shall be unlawful for any person, not licensed as an optometrist hereunder, to sell or dispose of, at retail, any spectacles, eye glasses or lenses for the correction of vision in any established place of business or elsewhere in this state except under the supervision, direction and authority of a duly licensed optometrist holding a certificate under this Chapter, who shall be in charge of and in personal attendance at the booth, counter or place where such articles are sold or disposed of. Nothing in this act shall be construed to apply to the sale of toy glasses, goggles consisting of plano-white or plano-

colored lenses or ordinary colored glasses or to the replacement by duplication of broken lenses, nor to sales upon prescription from persons legally authorized by the laws of this state to examine eyes and prescribe glasses therefor, nor shall it apply to regularly licensed physicians and surgeons. It shall be unlawful for any person to engage in the practice of optometry without first procuring and filing for record a certificate of registration as a licensed optometrist pursuant to this subdivision. ('15, c. 127, §5; '25, c. 239; Apr. 27, 1929, c. 420, §3.)

Section impliedly authorizes any unlicensed party to sell at retail eye glasses, provided such sale is under supervision, direction, and authority of a duly licensed optometrist personally in attendance, and state board of optometry may not adopt a rule making acceptance of such employment unprofessional conduct for which optometrist's license may be revoked. *Williams v. M.*, 202 M402, 278NW585.

An optometrist employed by a firm or a corporation is guilty of unprofessional conduct where the corporation employing him uses untruthful or misleading advertising. *Op. Atty. Gen.*, July 31, 1931.

When corporation is deemed to be practicing optometry contrary to law, stated. *Op. Atty. Gen.*, Aug. 19, 1931.

An optometrist may not treat eye for diseases, but insofar as measurement of powers of vision, diagnosis of optical deficiency or deformity or visual or muscular anomaly of the eye and the prescription of lenses, prisms or ocular exercises for the correction and relief of the same is concerned, the optometrist has the same authority as does a medical doctor. *Op. Atty. Gen.* (329c), Sept. 11, 1934.

**5790. Who may practice optometry.**—The persons entitled to practice optometry in Minnesota who are not already registered shall be: Every person of a full age of 21 years who furnishes the board with satisfactory evidence of:

(a) His age and moral character.

(b) That he has graduated from an accredited high school or its equivalent, and that he possesses the knowledge essential to the practice of optometry.

(c) That he shall be a graduate of an optometric school or college approved by this board, requiring an attendance of not less than two years' course. Such school shall give a course of instruction covering and including the following minimum requirement, to-wit:

Ocular anatomy .....	125 hours
Ocular pathology .....	125 hours
General anatomy .....	150 hours
General physiology .....	100 hours
General mathematics .....	150 hours
General physics .....	100 hours
General optics .....	100 hours
Theoretical optics .....	300 hours
Practical optics .....	100 hours
Theoretical optometry .....	250 hours
Practical optometry .....	200 hours
Hygiene .....	50 hours
Psychology .....	50 hours
Optical laboratory work .....	100 hours
Clinical work .....	100 hours

In the course of study herein outlined, the hours required shall be actual work in the class room, laboratory or clinic, and at least eighty per cent of actual attendance shall be required and said course of study herein outlined shall be so arranged as to require two years of actual attendance at said school for its completion.

(d) Having passed satisfactorily an examination by the board as to his qualifications for the practice of optometry, upon the completion of which, he shall receive from said board a licensed certificate entitling him to practice. Any person desiring to be examined by said board must fill out and swear to an application furnished by the board and must file the same with the secretary of the board at least two weeks prior to the holding of an examination, which the applicant is desirous of taking. The applicant shall pay to the board a fee of twenty dollars (\$20.00) before examination and five dollars (\$5.00) upon issuance of certificate. In the event of failure on the part of a candidate to pass the first examination, he may, within fifteen

months, have another trial; upon the payment of five dollars (\$5.00) additional. Any applicant may be registered and given a certificate of registration if he shall present a certified copy of certificate of registration, or license which has been issued to said applicant by any other state, where the requirements for registration shall be deemed by said board to be equivalent to those of this act; provided that such state shall accord like privileges to holders of certificates of said board. The fee for registering such applicants shall be fifteen dollars (\$15.00).

The board upon hearing of which the accused shall have ten days' notice in writing may revoke the certificates or suspend the right to practice of any person who has been convicted of any violation of this act or of any other criminal offense or who is found by the board to be grossly incompetent, afflicted with contagious disease, a habitual drunkard, or guilty of unprofessional conduct. "Unprofessional Conduct" shall be defined to mean any conduct of a character likely to deceive or defraud the public, including among other things price advertising, and free examination advertising, the loaning of his license or certificate by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business; "splitting" or dividing a fee with any person or persons; the obtaining of any fee or compensation by fraud or misrepresentation; employing either directly or indirectly any suspended or unlicensed optometrist, to perform any work covered by this act; the advertising by any means whatsoever, of optometric practice or treatment or advice in which untruthful, improbable, misleading or impossible statements are made. After one year, upon application, and proof, that the disqualification has ceased, the board may reinstate such person.

(e) Every registered optometrist who shall temporarily practice optometry outside or away from his regular registered place of business shall display his registered certificate and shall deliver to each customer or person there fitted or supplied with glasses a receipt or record which shall contain his signature and show his permanent registered place of business or post office address, and number of his certificate, together with the amount charged therefor, but nothing contained in this subdivision shall be construed as to permit peddling or canvassing by licensed optometrists. ('15, c. 127, §6; '25, c. 239; Apr. 27, 1929, c. 420, §4.)

In reviewing the determination of administrative boards such as the optometry board court will inquire no further than to determine whether board kept within its jurisdiction, whether it proceeded upon a proper theory of law, whether its action was arbitrary or oppressive and unreasonable, and whether evidence affords a reasonable and substantial basis for order sought to be reviewed. *State v. Jensen*, 286NW305. See *Dun. Dig.* 1402.

Evidence before board was sufficient to sustain board's action in revoking relator's license to practice optometry. *Id.* See *Dun. Dig.* 7483.

Complaint in a proceeding before state optometry board was sufficient to give board jurisdiction. *Id.* See *Dun. Dig.* 7483.

Under this section as amended by Laws 1929, c. 420, §4, a formal complaint to the board is not necessary to the institution of a hearing on charges against a violator. *Op. Atty. Gen.*, Apr. 7, 1930.

The practice of optometry is a profession which a corporation cannot lawfully practice, and it is not lawful for a corporation to advertise that it will furnish the services to optometrists. *Op. Atty. Gen.*, July 31, 1931.

There is no right of appeal from findings and order of the board in proceedings to discipline a licensee, but the order is reviewable on certiorari. *Op. Atty. Gen.*, July 31, 1931.

Applicant under 21 may take examination. *Op. Atty. Gen.*, June 16, 1933.

Board may issue license to married optometrist in her married name. *Op. Atty. Gen.* (329b), Oct. 31, 1933.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

(d). Board cannot impose qualifications in excess of statutory requirements. *Op. Atty. Gen.* (329a), July 11, 1934.

**5791. Persons entitled to practice optometry—Examinations—Fee—Registration and license—Etc.**

Clerk of district court may not remove name of optometrist because he moves away, becomes inactive,

of has his license revoked, but a certified copy of order of revocation probably may be filed with clerk. Op. Atty. Gen. (329), Dec. 9, 1937.

Board may require information regarding recording of certificate before renewing same. Op. Atty. Gen. (329b), Jan. 27, 1938.

#### 5792. Annual fees.

It is within power of board to require before issuance of renewal licenses answer under oath to question whether applicant practiced the profession during the last year in accordance with optometry act and the rules and regulations. Op. Atty. Gen. (329b), Dec. 23, 1938.

#### 5794. Penalty for violations of law.

An optometrist employed by retailer of eye glasses should not be punished for misdeeds of employer. Williams v. M., 202M402, 278NW585.

**5796. Laws repealed.**—All acts and parts of acts so far as inconsistent herewith, are hereby repealed. ('15, c. 127, §12; '25, c. 239; Apr. 27, 1929, c. 420, §5.)

**5796-2. Effective Sept. 1, 1929.**—This act shall take effect September 1st, 1929. (Laws 1925, c. 239, §14, added Apr. 27, 1929, c. 420, §6.)

### PHARMACISTS

#### 5797. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §5808-2 to 5808-6.

#### 5798. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §§5808-8, 5808-9.

Where total income of members of body is less than \$1,200 during year, their per diem compensation of \$10 is not affected by Laws 1933, c. 413, §37. Op. Atty. Gen., June 28, 1933.

#### 5799. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §§5808-7, 5808-15, 5808-21.

Board has authority to meet in June, 1934, for purpose of examining applicants but must again meet within six months to conduct another examination. Op. Atty. Gen., Mar. 14, 1934.

#### 5799-1. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

#### 5800. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §§5808-10, 5808-11.

Laws 1933, c. 301, reenacting original §5800, did not have effect of repealing amendments of 1929 and 1931, but they still remain in force and qualify 1933 act. Op. Atty. Gen., May 16, 1933.

#### 5801. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §5808-10. See §5801-1.

#### 5801-1. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of former law, see §5805.

#### 5802. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §5808-12. Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### 5803. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §5808-20.

#### 5804. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.  
Similar provisions of The Pharmacy Law, see §§5808-13, 5808-14.

Pharmacists must pay annual renewal fee to practice. Op. Atty. Gen. (303c-10(a)), May 21, 1936.

#### 5805. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §§5808-1, 5808-24, 5808-27.

172M132, 214NW766; note under §5814.

Milk of magnesia, manufactured, distributed, and sold in the manner shown by the evidence, was not a proprietary medicine. State v. F. W. Woolworth Co., 184M 51, 237NW817. See Dun. Dig. 2846(31).

The pharmacy law is constitutional as applied to sale of harmless medicine sold in original package of manufacturer. State v. F. W. Woolworth Co., 184M51, 237NW 817. See Dun. Dig. 2846.

Whether cold tablets sold by drug company contained poison injurious to plaintiff held for jury. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

In action by wholesaler against retailer and sureties where facts pleaded in complaint were admitted by principal defendant, burden of proof was upon sureties on their allegation that plaintiff and principal defendant were engaged in selling drugs in violation of statute. W. T. Rawleigh Co. v. S., 192M483, 257NW102. See Dun. Dig. 2846.

#### 5806. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §5808-22.  
Drug company was negligent in sending barrel of raw linseed oil in response to an order for cod liver oil, and druggist was negligent in selling it to poultryman as cod liver oil. 177M390, 225NW395.

#### 5807. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

#### 5808. [Repealed.]

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §5808-25.

#### 5808-1. Definitions.—As used in this Act.

(a) The term "pharmacy" shall mean a drug store or other established place regularly registered by the State Board of Pharmacy, in which prescriptions, drugs, medicines, chemicals and poisons are compounded, dispensed, vended or sold at retail.

(b) The term "pharmacist" shall mean a natural person licensed by the State Board of Pharmacy to prepare, compound, dispense and sell drugs, medicines, chemicals, and poisons.

(c) The term "assistant pharmacist" shall mean a natural person licensed as such by the State Board of Pharmacy prior to January 1st, 1930, to prepare, compound, dispense and sell drugs, medicines, chemicals and poisons in a pharmacy having a pharmacist in charge.

(d) The term "drug" shall mean all medicinal substances and preparations recognized by the United States Pharmacopeia and National Formulary or any revision thereof, and all substances and preparations intended for external and internal use in the cure, mitigation, treatment or prevention of disease in man and other animal, and all substances and preparations, other than food, intended to affect the structure or any function of the body of man or other animal.

(e) The term "medicine" shall mean any remedial agent that has the property of curing, preventing, treating or mitigating diseases, or that is used for that purpose.

(f) "Poisons" shall mean any substance, which when introduced into the system, either directly or by absorption, produces violent, morbid or fatal changes or which destroys living tissue with which it comes in contact.

(g) "Chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(h) The term "board" or "State Board of Pharmacy" shall mean the Minnesota State Board of Pharmacy.

(i) The term "secretary" shall mean the secretary of the Minnesota State Board of Pharmacy.

(j) The word "person" shall be construed to include every individual, copartnership, corporation or association, unless the context otherwise requires.

(k) Masculine words shall include the feminine and neuter and the singular includes the plural.

(l) The term "wholesale" shall mean and include any sale for the purpose of resale.

(m) The phrase "commercial purposes" shall mean the ordinary purposes of trade, agriculture, industry and commerce, exclusive of the practices of medicine and pharmacy. (Apr. 22, 1937, c. 354, §1.)

(n)

Dispensaries in state, county, and city institutions where prescriptions are compounded and drugs and medicines dispensed need not be annually registered, as in other cases. Op. Atty. Gen. (337B-2), August 15, 1939.

(d). "Drug."

Prophylactics can only be sold under direction of registered pharmacist. Op. Atty. Gen. (337c), Dec. 16, 1938.

Emmenagogues can only be sold under direction of registered pharmacist. Op. Atty. Gen. (377c-3), Feb. 1, 1939.

Term "drug" includes laxatives, digestives, and tonics. Op. Atty. Gen. (337c-3), Feb. 21, 1939.

**5808-2. Minnesota State Board of Pharmacy formed.**—The Minnesota State Board of Pharmacy shall consist of five pharmacists actively engaged in the practice of pharmacy in this State, each of whom shall have had at least five consecutive years of practical experience as a pharmacist immediately preceding his appointment. (Apr. 22, 1937, c. 354, §2.)

Similar provisions of former law, see §5797.

**5808-3. Members appointed by Governor.**—The members of the board shall be appointed by the governor, one in each year, each to serve for a term of five years and until his successor shall have been appointed and qualified. Vacancies shall be filled by the appointment for the unexpired term. Any member of the board who, during his incumbency, ceases to be actively engaged in the practice of pharmacy in this State, shall be automatically disqualified from membership. Any member may be removed from office by the governor upon proof of malfeasance or misfeasance in office. The members of the Minnesota State Board of Pharmacy heretofore appointed and now holding office shall continue until their respective terms expire. (Apr. 22, 1937, c. 354, §3.)

Similar provisions of former law, see §5797.

**5808-4. Recommended names.**—The Minnesota State Pharmaceutical Association shall recommend five names for each appointment to be made, from which list the governor may select. (Apr. 22, 1937, c. 354, §4.)

Similar provisions of former law, see §5797.

**5808-5. Election of officers.**—The board shall annually elect one of its members as president and one of its members as vice-president, and a pharmacist, who may or may not be a member, as secretary. (Apr. 22, 1937, c. 354, §5.)

Similar provisions of former law, see §5797.

**5808-6. Powers and duties.**—The State Board of Pharmacy shall have the power, and it shall be its duty:

(a) To regulate the practice of Pharmacy.

(b) To regulate the sale of drugs, medicines, chemicals and poisons.

(c) To regulate the quality of all drugs and medicines dispensed in this State, using the United States Pharmacopeia and the National Formulary, or any revisions thereof, as the standard.

(d) It may, by its duly authorized representative, enter and inspect any and all places where drugs, medicines, chemicals and/or poisons are sold, vended, given away, compounded, dispensed or manufactured. It shall be unlawful for any persons to refuse to permit or otherwise prevent such representative from entering such places and making such inspection.

(e) To examine and register as pharmacists all applicants whom it shall deem qualified to be such.

(f) Upon hearing, to temporarily or permanently revoke pharmacist or assistant pharmacist licenses issued by it, whenever the holder of such license has obtained same by false representation or fraud, or shall be an habitual drunkard or addicted to the use of narcotic drugs, or shall have been convicted of a felony, subject to the right of such holder to appeal to the district court of the proper county on the question of law and fact.

(g) To report its proceedings annually to the governor with such information and recommendations as it deem proper, giving the names of all pharmacists registered during the year, and the items of its receipts and disbursements.

(h) To employ necessary assistants, and make rules for the conduct of its business.

(i) To perform such other duties and exercise such other powers as the provisions of the Act may require.

(j) For the purposes aforesaid, it shall also be the duty of the board to make and publish uniform rules and regulations not inconsistent herewith, for carrying out and enforcing the provisions of the Act. (Apr. 22, 1937, c. 354, §6.)

Similar provisions of former law, see §5797.

**5808-7. Meetings.**—The board shall meet at least once in every six months to examine applicants for registration and to transact its other business, giving reasonable notice of all examinations by mail, to known applicants therefor. The secretary shall record the names of all persons registered by the board together with the grounds upon which the right of each to registration was claimed. The fee for examination shall be ten dollars, which fee may, in the discretion of the board, be returned to applicants not taking the examination. (Apr. 22, 1937, c. 354, §7.)

Similar provisions of former law, see §5799.

**5808-8. Compensation of members of board.**—Each member of the board shall receive ten dollars a day for his actual services as such, and his necessary expenses in attending meetings. (Apr. 22, 1937, c. 354, §8.)

Similar provisions of former law, see §5798.

**5808-9. Salaries of secretaries.**—The secretary shall receive a salary to be fixed by the board, and all expenses necessarily incurred by him in the performance of his duties. He shall give such a bond as the board may from time to time require, which bond shall be approved by the board and by the attorney general. (Apr. 22, 1937, c. 354, §9.)

Similar provisions of former law, see §5798.

**5808-10. Qualification of applicants.**—To be entitled to examination by the board as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, at least twenty-one years of age, and shall be a graduate of the College of Pharmacy of the University of Minnesota or of a college or school of pharmacy recognized and approved by, or a member, of the American Association of Colleges of Pharmacy, and shall have at least one year of practical experience in a pharmacy. (Apr. 22, 1937, c. 354, §10.)

Similar provisions of former law, see §5800, 5801.

**5808-11. Registered assistant pharmacist to continue in certain cases.**—It shall be lawful for all persons duly registered as assistant pharmacists prior to January 1st, 1930, to continue to act as such and nothing herein shall prevent such persons from taking the examination for pharmacist, upon proper application and payment of the examination fee. (Apr. 22, 1937, c. 354, §11.)

Similar provisions of former law, see §5800.

**5808-12. May grant licenses without examination in certain cases.**—The board may, in its discretion, grant registration without examination, to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this State, provided the requirements for registration in such other state are, in the opinion of the board, equivalent to those herein provided. The fee for registration shall be Twenty-five Dollars. (Apr. 22, 1937, c. 354, §12.)

Similar provisions of former law, see §5802.

**5808-13. Annual renewal fees.**—Every person registered by the board shall annually pay to the board, a renewal fee to be fixed by it, which fee shall not exceed five dollars for a pharmacist and three dollars

for an assistant pharmacist. It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. Every certificate and renewal shall expire at the time therein prescribed, not later than one year from its date. (Apr. 22, 1937, c. 354, §13.)

Similar provisions of former law, see §5804.

**5808-14. Re-instatements.**—Any person who has been registered by the board and has defaulted in the payment of said renewal fee may be reinstated within two years of such default without examination upon payment of the arrears. (Apr. 22, 1937, c. 354, §14.)

Similar provisions of former law, see §5804.

**5808-15. Exempt from jury duty.**—All persons licensed under this Act, or who have heretofore been licensed by the Board as pharmacists or assistant pharmacists, and are actively engaged in the practice of their profession, shall be exempt from jury duty in all the courts of this State. (Apr. 22, 1937, c. 354, §15.)

Similar provisions of former law, see §5799.

**5808-16. Compounding unlawful under certain conditions.**—(a) It shall be unlawful for any person to compound, dispense, vend or sell at retail, drugs, medicines, chemicals and/or poisons in any place other than a pharmacy, except as hereinafter provided.

(b) No proprietor of a pharmacy shall permit the compounding or dispensing of prescriptions or the vending or selling at retail of drugs, medicines, chemicals, or poisons in his pharmacy except under the personal supervisions of a pharmacist or of an assistant pharmacist in the temporary absence of the pharmacist. (Apr. 22, 1937, c. 354, §16.)

Similar provisions of former law, see §5814.

Poisons sold for medicinal purposes must be sold in pharmacies or under section 5808-27. Op. Atty. Gen. (337c-2), Mar. 26, 1938.

**5808-17. Violations a gross misdemeanor.**—Every person who violates any of the provisions of section sixteen, when the death of a human being results from such violation, shall be guilty of a gross misdemeanor. Provided, however, that this section is supplementary to existing laws relating to homicide and not a repeal thereof. (Apr. 22, 1937, c. 354, §17.)

Similar provisions of former law, see §5814.

**5808-18. Unlawful acts.**—It shall be unlawful for any person to falsely assume or pretend to the title of pharmacist. (Apr. 22, 1937, c. 354, §18.)

Similar provisions of former law, see §5814.

**5808-19. Same.**—It shall hereafter be unlawful for any person to carry on, conduct or transact a retail business under a name which contains as a part thereof, the words, "drugs", "drug store", "pharmacy", "medicine", "apothecary", or "chemist shop", or any abbreviation, translation, extension or variation thereof; or in any manner by advertisement, circular or poster, sign or otherwise, describe or refer to the place of business conducted by such person by such term, abbreviation, translation, extension or variation, unless the place so conducted is a pharmacy. (Apr. 22, 1937, c. 354, §19.)

Similar provisions of former law, see §5814.

Use of words "laxatives," "digestives," and "tonics" in advertising a store not a pharmacy and not operated by a registered pharmacist is a violation of this section. Op. Atty. Gen. (337c-3), Feb. 21, 1939.

**5808-20. Pharmacies shall be registered.**—The State Board of Pharmacy shall require and provide for the annual registration of every pharmacy now or hereafter doing business within this State. Upon the payment of a fee not to exceed five dollars, the board shall issue a license in such forms as it may prescribe, to such persons as may be qualified by law to conduct a pharmacy. Such license shall be exposed in a conspicuous place in the pharmacy for which it is issued and shall expire on the Thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a pharmacy unless such license

has been issued to him by the board. (Apr. 22, 1937, c. 354, §20.)

Similar provisions of former law, see §5803.

Dispensaries in state, county, and city institutions where prescriptions are compounded and drugs and medicines dispensed need not be annually registered, as in other cases. Op. Atty. Gen. (337B-2), August 15, 1939.

**5808-21. Suspension and revocation of registration.**—The board may suspend, revoke or refuse to renew any registration obtained by false representation or fraud, or when the pharmacy for which the registration shall have been made is kept open for the transaction of business without a pharmacist in charge thereof, or when the person to whom registration shall have been granted has been convicted for violation of any of the provisions of the Act or for a felony, or, if a natural person, whose pharmacist license has been revoked under subsection (f) of Section 6 of this Act. Before any registration can be revoked the holder thereof shall be entitled to a hearing by the board, upon due notice of the time and place where such hearing will be held. The accused may be represented by legal counsel, shall be entitled to compulsory attendance of witnesses and shall have the right of appeal to the district court of the proper county on the question of law and fact. (Apr. 22, 1937, c. 354, §21.)

Similar provisions of former law, see §5799.

**5808-22. Drugs must be labeled.**—It shall be unlawful for any person, who prepares prescriptions, drugs, medicines, chemicals or poisons to wilfully, negligently, or ignorantly omit to label the package or receptacle, label it falsely, substitute an article different from the one ordered or deviate in any manner from the requirements of an order or prescription. (Apr. 22, 1937, c. 354, §22.)

Similar provisions of former law, see §5806.

**5808-23. May be held liable for quality of drugs etc.**—(a) Every proprietor or manager of a pharmacy shall be responsible for the quality of all drugs, medicines, chemicals and poisons sold therein, except proprietary medicines or other articles sold in the original package of the manufacturer.

(b) It shall be unlawful for any person or his agent to adulterate any drug, medicinal substance or preparation authorized by the United States Pharmacopeia or National Formulary or any revision thereof, or any drug, medicinal substance or preparation used or intended to be used in medical practice.

(c) It shall be unlawful to mix with any such article any foreign or inert substance for the purpose of weakening its medicinal effect or of cheapening it, or to sell the same knowing it to be adulterated or mixed.

(d) Nothing in this Act shall be construed to change any of the provisions of the Pure Drug Act of Minnesota, being Chapter 190, Laws of 1921. (Apr. 22, 1937, c. 354, §23.)

Similar provisions of former law, see §5813.

**5808-24. Poisons must be labeled.**—It shall be unlawful for any person to sell at retail any poison without affixing to the package or receptacle containing the same, a label conspicuously bearing the word "poison" and the name and the business address of the seller; and satisfying himself that such poison is to be legitimately used. This section shall not apply to the sale of poison on a physician's written prescription or in the original package of the manufacturer. (Apr. 22, 1937, c. 354, §24.)

Similar provisions of former law, see §5805.

**5808-25. Sale of poisons must be recorded.**—It shall be unlawful.

(a) For any person, either on his own behalf, or while in the employ of another, to sell or give away any poison, as designated by the board, without first recording in a book to be kept for that purpose, with an indelible pencil or ink, the date, the name and address of the person to whom and the amount and

kind of poison delivered, except when such poison is sold on the written prescription of a physician.

(b) To give a false name to be recorded.

(c) For any person having custody of any such record book to refuse to produce it on demand for the inspection of any authorized agent of the board or other duly authorized officer. (Apr. 22, 1937, c. 354, §25.)

Similar provisions of former law, see §5808.

**5808-26. Selling at wholesale prohibited.**—It shall be unlawful for any person engaged in the business of selling at wholesale, or his agent, to sell drugs, medicines, chemicals or poisons, to other than a pharmacy except as herein provided. (Apr. 22, 1937, c. 354, §26.)

**5808-27. Exceptions.**—(a) Nothing in this act shall subject a person duly licensed in this state to practice medicine, dentistry or veterinary medicine to inspection by the Board nor prevent him from compounding or using drugs, medicines, chemicals or poisons in his practice nor prevent one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals or poisons as he deems proper in the treatment of such patient.

(b) Nothing herein shall prevent the sale of drugs, medicines, chemicals or poisons, at wholesale, to licensed physicians, dentists and veterinarians for use in their practice, nor to hospitals for use therein.

(c) Nothing herein shall prevent the sale of drugs, chemicals or poisons, either at wholesale or retail, for use for commercial purposes, or in the arts, nor interfere with the sale of insecticides as defined in section 3901 of Mason's Minnesota Statutes of 1927, and nothing in this act shall prevent the sale of common household preparations and other drugs, chemicals and poisons, sold exclusively for use for non-medicinal purposes.

(d) Nothing herein shall apply to or interfere with the manufacture, wholesaling, vending, or retailing of non-habit forming, harmless proprietary medicines when labeled in accordance with the requirements of the State or Federal food and drug act; nor to the manufacture, wholesaling, vending or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature, for use for non-medicinal purposes.

(e) The State Board of Pharmacy may upon application and the payment of an annual registration fee not to exceed one dollar, register stores, other than a pharmacy, in any incorporated or unincorporated village wherein no pharmacy is located, or in any township wherein may be sold ordinary household drugs, chemicals and poisons, for medicinal purposes designated by the board, prepared in sealed packages by a licensed pharmacist, qualified under the laws of the State wherein he resides. The name and address of such pharmacist or the manufacturer shall appear conspicuously on each package. It shall be unlawful for any such store to sell such medicinal drugs, chemicals or poisons without first having secured such license. It shall be lawful for a person engaged in the business of selling at wholesale, or his agent, to sell such articles to such registered places.

The board may suspend, revoke or refuse to renew any such registration if the holder thereof shall have been found guilty of violating any of the provisions of this Act. Before any registration can be revoked or renewal refused, the holder thereof shall be entitled to a hearing by the board upon due notice of the time and place where such hearing will be held. Notice must be given at least ten days prior to the hearing. He shall be entitled to be represented by legal counsel and to appeal to the district court of the proper county on the questions of law and fact. (Apr. 22, 1937, c. 354, §27.)

Kreo, being similar to "compound solution of cresol", labeled "poison" and sold as an antiseptic disinfectant

for the "sick room, minor cuts, and general household use" can only be sold in a pharmacy or by a person duly licensed to practice medicine, dentistry, or veterinary medicine. Op. Atty. Gen. (337c-2), Mar. 26, 1938.

A veterinarian may sell veterinary supplies such as serums, vaccines, drugs, etc., to the general public for self-administration to animals. Op. Atty. Gen. (465d), May 23, 1939.

(d). Aspirin compounds are not proprietary medicines. Op. Atty. Gen. (337c-1), June 2, 1937.

(d). Hydrogen Peroxide is not a patent medicine, and does not come under exception. Op. Atty. Gen. (337c-3), May 20, 1938.

**5808-28. Deposit of fees.**—All fees received by the State Board of Pharmacy under this Act shall be forthwith deposited with the State Treasurer, to be kept in a separate fund, which shall be under the control, and for the use of said board. All expenditures of said board and all expenses necessarily paid or incurred thereby, in the exercise of its powers or the performance of its duties under this Act shall be paid out of said fund. Payments out of said funds shall be made only upon written orders issued and signed by the secretary of said board. No expense shall be incurred by said board in excess of the revenue derived from such fees. (Apr. 22, 1937, c. 354, §28.)

**5808-29. Board may turn over funds for advancement of science of pharmacy.**—The board may, in each year, turn over to the Minnesota State Pharmaceutical Association for the advancement of the science and art of pharmacy, out of the annual fees collected by it, such sum as it may deem advisable, not to exceed one dollar for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year. Said Association shall annually report to the board on the conditions of pharmacy in the state. (Apr. 22, 1937, c. 354, §29.)

Similar provisions of former law, see §5815.

**5808-30. Violation a misdemeanor.**—Any person violating any of the provisions of this Act or rules and regulations hereunder, shall be guilty of a misdemeanor, unless otherwise provided. (Apr. 22, 1937, c. 354, §30.)

**5808-31. County attorney to prosecute.**—It shall be the duty of the county attorney of the county wherein any offense hereunder is committed, to prosecute the offender, except that when offenses hereunder are committed in cities of the first class it shall be the duty of the city attorney thereof to prosecute the offender. Such prosecutor is authorized to examine the books of any manufacturer or wholesale dealer within the State for the purpose of acquiring information to aid in the prosecution. (Apr. 22, 1937, c. 354, §31.)

**5808-32. Registered pharmacists or assistants may re-register.**—Persons, who, at the time of the enactment of this law, hold certificates of registration as pharmacists, or assistant pharmacists, granted by the State Board of Pharmacy of this State, shall not be required to register under this law but shall apply for and secure annual renewals thereof as provided in this Act and in all other respects be amenable to the provisions of this Act. (Apr. 22, 1937, c. 354, §32.)

**5808-33. Laws repealed.**—Sections 5797, 5798, 5799, 5800, 5801, 5802, 5803, 5804, 5805, 5806, 5807, 5808, 5813, 5814, 5815, 5816, of Mason's Minnesota Statutes of 1927 and Chapter 94 of the Laws of 1929, Chapter 103 of the Laws of 1929, Chapter 297 of the Laws of 1933 and Chapter 381 of the Laws of 1933 are hereby repealed. (Apr. 22, 1937, c. 354, §33.)

**5808-34. Provisions severable.**—If any section, subsection, clause or phrase of this Act shall be held invalid, such decision shall not affect the validity of the remaining portions of this Act. It is hereby declared that this Act would have been passed irrespective of the fact that any one or more sections, subsections,

sentences, clauses or phrases are declared unconstitutional or invalid. (Apr. 22, 1937, c. 354, §34.)

**5808-35. Title of act.**—The title of this Act shall be The Pharmacy Law of 1937. (Apr. 22, 1937, c. 354, §35.)

Sec. 36 of Act Apr. 22, 1937, cited, provides that the Act shall take effect from its passage.

**5810. Penalty for violation.**

Penalty of revocation of license does not follow violation of federal laws. Op. Atty. Gen. (156f), May 12, 1936.

**5811. Duty of county attorney.**

Similar provisions of The Pharmacy Law, see §5808-31.

**5812. Fines, how disposed of.**

Cost of criminal cases against violators of pharmacy act are to be paid either by the county or by the defendant, and cannot be paid out of fund in hands of state board of pharmacy. Op. Atty. Gen. (199a-3), Mar. 18, 1936.

**5813. [Repealed.]**

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §5808-23. Medicines not bearing the name of the real manufacturer, but sold by a druggist under a label or representation that they have been "prepared for" him, are not proprietary. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

Section makes a druggist responsible for quality in the sale of nonproprietary drugs, and leaves the measure of his liability for proprietary medicines as before. Tiedje v. H., 184M569, 239NW611. See Dun. Dig. 2846-2847b.

In action against druggist evidence held to sustain finding that mineral oil contaminated with formalin or formaldehyde in deleterious quantity was sold to plaintiff for family use and that it caused death of his child. Berry v. D., 195M366, 263NW115. See Dun. Dig. 6995.

**5814. [Repealed.]**

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §§5808-16 to 5808-19, §5808-30.

W. T. Rawleigh Co. v. S., 192M483, 257NW102, note under §5805.

Section is constitutional exercise of the police power. 172M132, 214NW766.

"Aspirin" is a drug or medicine and not a proprietary or patent medicine. 172M132, 214NW766.

Title of Laws 1925, c. 339, is not defective. 173M 322, 217NW342.

Registered pharmacist does not violate this section by leaving clerk in store selling other goods than drugs while he is out to his lunch and can be called by the clerk to attend within a few minutes. 173M322, 217NW 342.

Fact that a medicine properly prepared is harmless and that it is sold in the original package does not exempt its sale from the restrictions of this section. State v. F. W. Woolworth Co., 184M51, 237NW817. See Dun. Dig. 2846.

A store designated as a "drug store" operated by one who is not a registered pharmacist and who has none in his employ, and which sells proprietary drugs but fills no prescriptions, is not a "drug store" to which "On Sale" license may be granted. Op. Atty. Gen., Apr. 3, 1933.

Whether cod liver oil and mineral oil are drugs, medicines or poison is a question of fact upon which attorney general cannot pass. Op. Atty. Gen. (156g), Oct. 13, 1934.

**5815. [Repealed.]**

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

Similar provisions of The Pharmacy Law, see §5808-29.

**5816. [Repealed.]**

Repealed by Act Apr. 22, 1937, c. 354, §33. See §5808-33, post.

**EMBALMERS**

**5817. License required—what constitutes practice of embalming and funeral directing—apprentices.**—No person shall embalm any dead human body or practice embalming, direct or supervise funerals in the State of Minnesota without being licensed by the State Board of Health, except as hereinafter provided.

For the purposes of this Act, the following definitions shall be adopted and understood to be included within the meaning of this Act:

(a) Any person who shall embalm dead human bodies, or who shall take charge of the remains of those dead of any communicable disease, or prepare dead human bodies for shipment, or hold himself out

to do any of the above acts by advertising or any other means, shall be defined as and construed to be practicing embalming;

(b) Any person who engages for compensation in the following practices, to-wit: directing or supervising funerals, or the business or practice of preparing dead human bodies for burial by means other than embalming, or the disposition of dead human bodies, or the provision or maintenance of a place for the preparation for disposition or for the care or disposition of dead human bodies, or the use in connection with such business of the word or term "funeral director", "undertaker", "mortician", or any other word or term from which can be implied the business of funeral directing, or the holding out to the public that one is a funeral director, shall be defined as and construed to be practicing funeral directing, provided, however, that the word "person" as used herein shall apply only to a natural person.

(c) An "embalmer" is any person who has secured a license to engage in the practices hereinbefore set forth;

(d) A "funeral director" is any person who has secured a license to engage in the practices hereinbefore set forth;

(e) An "apprentice funeral director" is any person engaged in the learning of the practice of funeral directing under the instruction and personal supervision of a duly licensed and registered funeral director under the provisions of this Act; provided, that no persons shall serve or attempt to serve as such apprentice funeral director under any such funeral director until he has filed a registration thereof with the board;

(f) An "apprentice embalmer" is any person engaged in the learning of the practice of embalming under the instruction and personal supervision of a duly licensed and registered embalmer under the provisions of this Act; provided, however, that no person shall serve or attempt to serve as such apprentice embalmer under any such embalmer until he has filed a registration thereof with the board;

(g) An apprentice funeral director and/or embalmer may serve his apprenticeship concurrently under the direction and instruction of any person duly licensed and registered as an embalmer and/or funeral director under the provisions of this Act, provided that such concurrent apprenticeship shall not be served unless such apprentice has filed a registration thereof with the board. (As amended Apr. 24, 1937, c. 417, §1.)

Word "person" does not include corporation. Op. Atty. Gen. (950), Feb. 23, 1937.

Board of health may require that an establishment owned and operated as a branch funeral establishment must be in charge of a licensed funeral director, but it is doubtful that board may require that such funeral director be a full time employee. Op. Atty. Gen. (225n), June 30, 1937.

An assistant funeral director cannot be in charge of a funeral directing establishment and must work under a regularly licensed funeral director. Id.

Where embalmer maintained three places of business, agents at such places of business who do nothing except receive telephone calls are not required to have licenses. Op. Atty. Gen. (950), Aug. 2, 1937.

Person left in charge of building for purpose of admitting relatives and friends is not required to be licensed. Op. Atty. Gen. (950), Jan. 5, 1938.

In event of an emergency, such as illness of licensed director, a cooperative burial association may conduct funeral. Op. Atty. Gen. (950), Jan. 5, 1938.

**5818. Examination by state board of health—license.**—The State Board of Health of the State of Minnesota is hereby authorized and empowered to examine all applicants for license to practice embalming and/or funeral directing, and to determine whether or not such applicants possess the necessary qualifications to practice embalming, and/or funeral directing; and, if upon such examination, said board shall determine that such applicant is properly qualified to practice embalming and/or funeral directing, it shall grant a license or licenses to such person to practice embalming and/or funeral directing for a

period ending the 31st day of December following; provided that licenses as embalmers and licenses as funeral directors shall be issued separately.

To assist the board in the holding of such examination and enforcement of the provisions of this act, such board shall appoint three examiners, of whom two shall be licensed as embalmers and funeral directors who have had at least five years' experience immediately preceding appointment, in the preparation and disposition of dead human bodies and in the practice of embalming, and the third a representative of the board, to be known and designated as a "Committee of Examiners", to serve for one, two and three years respectively, and thereafter each for a term of three years and until their successors qualify. Vacancies in such committee shall be filled by like appointments for unexpired terms, and members thereof may be removed by the board for cause. Each member shall receive such sum per diem, and be reimbursed his necessary expenses for each day of actual service rendered, as the board may determine by its order. (As amended Apr. 24, 1937, c. 417, §2.)

The granting or refusing of a license must be the formal act of the board. It cannot delegate its duties to a committee or officer. Op. Atty. Gen., Sept. 4, 1929. Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5819. Application for examination—affidavits—fees—qualifications of applicants—apprentices—assistants—existing practitioners.**—The applicant for an examination for license as an embalmer and/or funeral director shall make application therefor in writing, verified on a form prescribed as to details and furnished by the board. Such application shall be accompanied by affidavits from at least two reputable residents of the county in which the applicant resides or proposes to carry on the practice of embalming and/or funeral directing, certifying that the applicant is of good moral character, and a fee of ten (\$10.00) dollars. No person shall be granted any such license unless he shall be twenty-one (21) years of age, and of good moral character and temperate habits; and has had at least one year of apprenticeship experience in embalming for an embalmer's license, and at least two years' apprenticeship experience in funeral directing for a funeral director's license; and such sufficient knowledge, experience and training as the board may determine to properly qualify as an embalmer and/or funeral director. Provided that any holder of a license issued by state authority in any other state maintaining a system and standard of examination for license to engage in the business or practice of embalming and/or funeral directing, which in the judgment of the board shall be substantially the equivalent of that required in this state for the issuance of a license therefor, may obtain a license from the board without examination in the discretion of the board upon payment of an application fee of twenty-five (\$25.00) dollars and upon proof of good moral character, temperate habits and practical experience, which said license shall be valid only until the following 31st day of December.

Every apprentice shall register with the board annually, in such manner as may be provided by the board, and shall pay a registration fee of one (\$1.00) dollar. The secretary of the board shall keep a separate register for apprentices, stating their names, ages, residences, where they attended school, the licensed embalmer and/or funeral directors with whom they were associated, and such other information as the board may require.

The board may license as assistant funeral directors, with or without examination, one or more assistants of funeral directors who are licensed under the provisions of this Act, upon payment of an assistant funeral director's license fee of one (\$1.00) dollar. Before issuing a license to an assistant funeral director, the board shall require satisfactory proof that said applicant is capable and trustworthy to act as an assistant funeral director. Such assistant funeral

directors shall be licensed and registered as assistants of designated licensed funeral directors.

All persons who have been engaged in the business or practice of a funeral director in this state at a fixed place or establishment three months or more prior to the passage of this Act, and have not been heretofore licensed, shall within ninety days after the passage of this Act make application in writing to the board for a license as a funeral director in the manner and form provided in this Act. Upon satisfactory proof that such applicant is of good moral character and temperate habits, and has sufficient knowledge, training and experience to properly conduct the business or practice of funeral directing in all its phases, evidenced by the affidavits of two or more reputable citizens who reside in the community in which the applicant practices or has practiced, the board shall issue without further examination to such applicant a license as a funeral director upon the payment of a fee of four dollars. (As amended Apr. 24, 1937, c. 417, §3.)

Applicant for license as funeral director need not be owner of a funeral directing establishment. Op. Atty. Gen. (225n), June 30, 1937.

Assistant funeral director need not be a full time employee, but board may require applicant to have a minimum period of experience. Id.

Funeral directors from other states may not be permitted to conduct funerals in this state without obtaining license, there being no provision for reciprocity. Id.

Board may issue licenses as assistant funeral directors, without examination, to persons engaged in burying the dead, either as owners or employees in establishment located in other states, providing that applicants are otherwise qualified. Id.

It is doubtful that legislature intended to provide that a person otherwise qualified and experienced should be required to register and serve two years as an apprentice before being eligible for examination as an assistant funeral director. Id.

There is a strong presumption that one who has been engaged in business of a funeral director as an owner and operator of an establishment is entitled to a license without examination, but in case of an employee who applies for a funeral director's license without examination, statute should be given a more literal application and applicant should satisfy department of his eligibility. Op. Atty. Gen. (225n), Aug. 30, 1937.

**5820. Renewal—fee for.**—Any license may be renewed from time to time and shall be in force after such renewal for a period of one (1) year from the 31st day of the preceding December upon the payment of a renewal fee of four (\$4.00) dollars for a funeral director's license, and one (\$1.00) dollar for an embalmer's license. Provided, that all licenses to practice embalming in force at the time of the passage of this Act and which licenses are dated to expire on any date of any month in any year other than December 31st, shall be continued in full force and effect until December 31st of the year in which such license is dated to expire, and the holder of such license shall not be required to pay any additional renewal fee for such license period extension.

All fees received under this Act shall be paid by the State Board of Health to the State Treasurer, and an amount of money equal to the amount so paid over by the said board to the said treasurer is hereby appropriated, out of any money in the state treasury not otherwise appropriated, to said board for the purpose of carrying out the provisions of this Act. The salaries of the necessary employees of the board, and the per diem of the inspectors and examiners hereinbefore provided, their expenses and all incidental expenses of said board in carrying out the provisions of this Act, shall be paid on order of the board from such appropriation but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided. (As amended Apr. 24, 1937, c. 417, §4.)

**5821. Denial of license—suspension or revocation—grounds—certiorari—rules and regulations.**—The Board may refuse to grant, refuse to renew, or may suspend or revoke a license of any applicant or licensee for the following causes or acts:

(a) The obtaining of, or attempt to obtain, a license by fraudulent representation;

(b) Conviction of a crime involving moral turpitude;

(c) Violation of the laws of this state relative to the burial or disposal of dead human bodies, or of the rules and regulations of the board in relation to the care, custody or disposition of dead human bodies, or the disinfecting of premises where contagion exists;

(d) For incompetency or untrustworthiness in the practice of embalming and/or funeral directing;

(e) The use of misleading advertising;

(f) Upon satisfactory proof that the embalmer and/or funeral director, directly or indirectly, has paid or caused to be paid any sum of money or other valuable consideration for the securing of business or for obtaining authority to dispose of any dead human body;

(g) Upon satisfactory proof that an embalmer and/or funeral director has employed any person not registered or licensed under the provisions of this Act to perform the duties of an embalmer and/or funeral director—

Any action of the board in refusing to grant or renew a license, or in suspending or revoking a license, may be subject to review by a writ of certiorari issued in the District Court of any County.

The board shall make and enforce all necessary rules and regulations not inconsistent with the provisions of this Act for the examination and licensing of embalmers and/or funeral directors, and the registration and regulation of apprentices, and the investigation and hearing for the refusal to renew, suspension or revocation of licenses. (As amended Apr. 24, 1937, c. 417, §5.)

Board is not authorized to impose ownership of establishment or full time employment as condition to granting of license. Op. Atty. Gen. (225n), June 30, 1937.

**5822. Penalties for violation—Persons and activities not affected—separability.**—Any person who shall embalm a dead human body, or who shall hold himself out as an embalmer and/or funeral director or as an apprentice as herein defined, or as an assistant funeral director, without being licensed or registered as herein provided shall be guilty of a misdemeanor, and punished accordingly. Provided that this Act shall not apply to or in any way interfere with the duties of any officer of any public institution, or with the duties of any officer of a medical college, county medical society, anatomical association, accredited college of embalming, or to any person engaged in the performance of duties prescribed by law relating to the conditions under which the indigent dead human bodies are held subject to anatomical study, or to the custom or rites of any religious sect in the burial of their dead. Provided, further, that in the event any provision of this Act, or the application thereof to any person or circumstances, shall be declared invalid, the remainder of this Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Nothing in this Act shall in any way affect the operation of corporations or burial associations, providing all work of embalming or funeral directing is done by licensed embalmers and/or funeral directors as provided herein. It shall be unlawful for any such corporation or burial association to:

(a) Violate any of the laws of this state relative to the burial or disposal of dead human bodies, or any of the rules and regulations of the board in relation to the care, custody or disposition of dead human bodies, or the disinfecting of premises where contagion exists;

(b) Publish or disseminate misleading advertising;

(c) Directly or indirectly pay or cause to be paid any sum of money or other valuable consideration for the securing of business, other than by advertising, or for obtaining authority to dispose of any dead human bodies;

(d) Permit unlicensed persons to render or perform any of the services required to be performed by persons licensed under the provisions of this Act.

Any corporation or burial association violating any of the provisions of this Act shall be deemed guilty of a misdemeanor.

Nothing in this act shall be construed as repealing any of the laws of this State in regard to organizing and/or incorporating of Cooperative Associations. (As amended Apr. 24, 1937, c. 417, §6.)

## BARBERS

**5823 to 5840. [Repealed.]**

See §5846-26 herein.

**5846-1. Barbers must be registered.**—After July 1, 1927, no person shall practice or attempt to practice barbering without a certificate of registration as a registered barber issued pursuant to the provisions of this act, by the Board of Barber Examiners herein-after established.

After July 1, 1927, no person shall serve or attempt to serve as an apprentice under a registered barber until he has filed notice with the board of his intention of becoming an apprentice under a registered barber.

After July 1, 1927, it shall be unlawful to operate a barber shop unless it is at all times under the direct supervision and management of a registered barber. ('27, c. 316, §1, eff. July 1, 1927; Apr. 20, 1929, c. 270, §1.)

Persons working as barbers at veteran hospital must be registered and licensed under state law. Op. Atty. Gen., Apr. 19, 1933.

**5846-2. What constitutes barbering.**—Any one or any combination of the following practices when done upon the head and neck for cosmetic purposes and not for the treatment of disease or physical or mental ailments and when done for payment either directly or indirectly or without payment for the public generally constitutes the practice of barbering within the meaning of this act; to shave, trim the beard, cut or bob the hair of any person of either sex for compensation or other reward, received by the person performing such service or any other person; to give facial and scalp massage or treatments with oils, creams, lotions or other preparations either by hand or mechanical appliances; to singe, shampoo the hair or apply hair tonics; or to apply cosmetic preparations, antiseptics, powders, oils, clays or lotions to scalp, face or neck. ('27, c. 316, §2, eff. July 1, 1927; Apr. 20, 1929, c. 270, §2; Apr. 22, 1935, c. 229, §1.)

**5846-3. Apprentices may be employed.**—No registered apprentice may independently practice barbering, but he may as an apprentice do any or all of the acts constituting the practice of barbering, under the immediate personal supervision of a registered barber, and only one such apprentice shall be employed in any barber shop. ('27, c. 316, §3, eff. July 1, 1927; Apr. 20, 1929, c. 270, §3.)

**5846-4. Exceptions.**—The following persons are exempt from the provisions of this act while in the proper discharge of their professional duties:

1. Persons authorized by the law of this state to practice medicine, surgery, osteopathy, chiropractic and massage;
2. Commissioned medical or surgical officers of the United States Army, Navy, or Marine Hospital Service;
3. Registered nurses;
4. Persons practicing beauty culture.

However, the provisions of this section shall not be construed to authorize any of the persons exempted to shave or trim the beard or cut the hair of any person for cosmetic purposes. ('27, c. 316, §4, eff. July 1, 1927; Apr. 20, 1929, c. 270, §4.)

The last sentence is unconstitutional in so far as applied to licensed beauty culturists in that it deprives them of right to pursue their calling in respect to trimming and dressing women's hair. Johnson v. E., 285NW 77.

**5846-5. Who may receive certificates.**—A person is qualified to receive a certificate of registration to practice barbering;

1. Who is qualified under the provisions of Section 6 of this act;
2. Who is at least 18 years of age;
3. Who is of good moral character and temperate habits and free from any contagious or infectious disease;
4. Who has practiced as a registered apprentice for a period of 18 months under the immediate personal supervision of a registered barber; and
5. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice barbering.

An applicant for a certificate of registration to practice as a registered barber who fails to pass a satisfactory examination conducted by the board, must continue to practice as an apprentice for an additional six months before he is again entitled to take the examination for a registered barber. ('27, c. 316, §5, eff. July 1, 1927; Apr. 20, 1929, c. 270, §5.)

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5846-6. Who may receive certificates of registered apprentice.**—A person is qualified to receive a certificate of registration as a registered apprentice:

1. Who has completed at least eight grades of a grammar school education; and
2. Who is of good moral character and temperate habits and free from any contagious or infectious disease; and
3. Who has graduated from a school of barbering approved by the board; and
4. Who has passed a satisfactory examination conducted by the board to determine his fitness to practice as a registered apprentice.
5. An applicant for a certificate of registration to practice as an apprentice who fails to pass a satisfactory examination is required to complete a further course of study of not less than five hundred hours, to be completed in three months, of not more than eight hours in any one working day, in a school of barbering approved by the board.

6. A certificate of registration of an apprentice shall be annulled three years after the person first makes his application as a student. ('27, c. 316, §6, eff. July 1, 1927; Apr. 20, 1929, c. 270, §6; Apr. 22, 1935, c. 229, §2.)

Convict students must study under Minnesota registered barber. Op. Atty. Gen., Aug. 31, 1933.

(3).  
A person may not be issued a student permit under barber operating only in hairdressing parlor. Op. Atty. Gen., May 11, 1933.

**5846-7. Qualifications of barber school students.**—No school of barbering shall be approved by the board unless it requires as a pre-requisite to admission thereto, graduation from the eighth grade of a grammar school or its equivalent as determined by an examination conducted by the Minnesota Board of Education, who shall issue a certificate that the student has passed the required examination and unless it requires as pre-requisite to graduation a course of instruction of not less than 1,000 hours to be completed within six months of not more than eight hours in any one working day; such course of instruction to include the following subjects:—Scientific fundamentals for barbering, hygiene, practical study of the hair, skin, muscles and nerves, structure of the head, face and neck, elementary chemistry relating to sterilization and antiseptics, diseases of the skin, hair, glands, massaging and manipulating the muscles of the face and neck, hair cutting, shaving and trimming the beard.

Provided, further, that it shall be permissible for barber schools and barber colleges teaching the occupation of barbering to make a reasonable charge for materials used and services rendered by students for work done in such schools or colleges by students and there shall be one instructor to every fifteen

students or minor fraction in excess thereof. Barber colleges and schools shall open at 8 A. M. and close at 6 P. M., except on days preceding holidays when the hours shall be 8 A. M. and 6:30 P. M.

All barber schools or colleges shall each respectively be conducted and operated in one building, or in connecting buildings, and no barber school or college shall have any department or branch in a building completely separated or removed from the remainder of such barber school or college.

Any person may own and operate a barber college who has had ten years' continuous experience as a barber, providing such person shall first secure from the board a permit to do so, and shall keep the same prominently displayed, and shall before commencing business file with the secretary of state a bond to the state, approved by the attorney general, in the sum of \$1,000, conditioned upon the faithful compliance of said barber school with all the provisions herein, and to pay all judgments that may be obtained against said school or the owners thereof on account of fraud, misrepresentation or deceit practiced by them or their agents; provided, further, that all barber schools or colleges shall keep prominently displayed a substantial sign as barber school or college. Provided, further, that all barber schools upon receiving students shall immediately apply to said board for student permits upon blanks for said purpose furnished by the board.

(a) Every applicant for a student permit shall accompany his application with a fee of three dollars. ('27, c. 316, §7, eff. July 1, 1927; Apr. 20, 1929, c. 270, §7; Apr. 22, 1935, c. 229, §3.)

An instructor in a barber college has no right to work at chair taking in money. Op. Atty. Gen., June 17, 1933.

**5846-8. Application—Fee.**—Each applicant for an examination shall:

1. Make application to the board on blank forms prepared and furnished by the board, such application to contain proof under the applicant's oath of the particular qualifications of the applicant;

2. Furnish to the board two 5"x3" signed photographs of the applicant, one to accompany the application and one to be returned to the applicant, to be presented to the board when the applicant appears for examination;

3. Pay to the board the required fee. ('27, c. 316, §8, eff. July 1, 1927; Apr. 20, 1929, c. 270, §8.)

**5846-9. Conduct and scope of examinations.**—The board shall conduct examinations of applicants for certificates of registration to practice as registered barbers and registered apprentices not more than four times each year, at such time and place as the board may determine provided further that a permit shall be issued to a student upon an affidavit filed with the Minnesota Barbers' Examining Board, by the proprietor of a barber college or barber school and the student, that the student has completed 1,000 hours in a duly approved barber school or barber college of the State of Minnesota, upon the payment of one dollar. The permit shall expire at the next regular examination held by the Minnesota Barbers' Examining Board.

The examination of applicants for certificates of registration as registered barbers and registered apprentices shall include both a practical demonstration and a written and oral test, and shall embrace the subjects usually taught in schools of barbering approved by the board. ('27, c. 316, §9, eff. July 1, 1927; Apr. 20, 1929, c. 270, §9; Apr. 22, 1935, c. 229, §4.)

**5846-10. Certificates of registration.**—Whenever the provisions of this act have been complied with, the board shall issue a certificate of registration as a registered barber or as a registered apprentice. ('27, c. 316, §10, eff. July 1, 1927; Apr. 20, 1929, c. 270, §10.)

**5846-11. Permits to practice.**—A person who is at least 18 years of age and of good moral character and temperate habits, and either

1. Has a license or certificate of registration as a practicing barber from another state or country, which has substantially the same requirements for licensing or registering barbers as required by this act, or

2. Who can prove by sworn affidavits that he has practiced as a barber in another state or country for at least five years immediately prior to making application in this state, shall upon payment of the required fee be called by the board for examination to determine his fitness to receive a certificate of registration to practice barbering. ('27, c. 316, §11, eff. July 1, 1927; Apr. 20, 1929, c. 270, §11; Apr. 22, 1935, c. 229, §5.)

Barber coming from state where barbers were required to have license must present proof that he is licensed in that state, but if such state does not require license, he must submit sworn affidavits that he has practiced as barber in such state for 5 years. Op. Atty. Gen., May 23, 1933.

Minnesota residents cannot be ordered to cease barbering upon failure to pass examination. Op. Atty. Gen., Mar. 19, 1934.

**5846-12. Same.**

1. A person who is of good moral character and temperate habits, and

2. Has a certificate of registration as an apprentice in a state or country which has substantially the same requirements for registration as an apprentice as is provided by this act shall upon payment of the required fee be called by the board for examinations to determine his fitness to receive a certificate of registration as an apprentice. Being able to pass the required examination he will be issued a certificate of registration as a registered apprentice. Should he fail to pass the required examination, he shall conform to the requirements of Section 6, subsection 5 of this act before being permitted to take another examination. ('27, c. 316, §12, eff. July 1, 1927; Apr. 20, 1929, c. 270, §12; Apr. 22, 1935, c. 229, §6.)

**5846-13. Barber's license under present law to continue practice without examination.**—Every barber in this state holding a certificate of registration as such, and every apprentice in this state holding a permit or certificate to practice as such, issued pursuant to the provisions of any statute repealed by this act, at the time of the taking effect of this act shall have the right to continue to practice as a registered barber or apprentice, as the case may be, until December 31, 1927, without the payment of any fees or any other act and shall thereafter have the right to be registered and practice as such barber or apprentice upon payment of the registration fee or fees required by this act. ('27, c. 316, §13, eff. July 1, 1927; Apr. 20, 1929, c. 270, §13.)

**5846-14. Certificates to be displayed.**—Every holder of a certificate of registration shall display it in a conspicuous place adjacent to or near his work chair. ('27, c. 316, §14, eff. July 1, 1927; Apr. 20, 1929, c. 270, §14.)

**5846-15. Certificates must be renewed annually.**—All registered barbers and registered apprentices who continue in active practice or service shall on or before December 31, 1927, and thereafter annually, on or before December 31st of each year, renew their certificates of registration for the following year and pay the required fee. Every certificate of registration which has not been renewed during the month of December in any year shall expire on the 31st day of December in that year. A registered barber or a registered apprentice who has defaulted in renewing his certificate of registration may be reinstated within one year of such default, without examination, upon the payment of the required restoration fee. ('27, c. 316, §15, eff. July 1, 1927; Apr. 20, 1929, c. 270, §15; Apr. 22, 1935, c. 229, §7.)

**5846-16. Causes for revocation.**—The board may either refuse to issue or renew, or may suspend or revoke any certificate of registration for any one or combination of the following causes:

(a) Gross malpractice or gross incompetency.

(b) Continued practice by a person having an infectious or contagious disease.

(c) Advertising by means of knowingly false or deceptive statements.

(d) Habitual drunkenness or habitual addiction to the use of morphine, cocaine or other habit-forming drugs.

(e) Immoral or unprofessional conduct or practice.

(f) The commission of any of the offenses described in sub-division c, d, e, f, g, or h of Section 19 hereof.

(g) The failure to practice for the period of one year prior to the date of application for issuance of renewal of license, or prior to such suspension or revocation of license.

(h) Violation of so-called Sunday closing laws, being Sections 10234 to 10236, both inclusive, of General Statutes of Minnesota, 1923.

(i) A registered apprentice working in a barber shop in which he has a financial interest. ('27, c. 316, §16, eff. July 1, 1927; Apr. 20, 1929, c. 270, §16; Apr. 22, 1935, c. 229, §8.)

Violation of 18th Amendment constitutes moral turpitude warranting refusal of renewal. Op. Atty. Gen., May 21, 1929.

**5846-17. Board must give notice in writing.**—The board may neither refuse to issue or refuse to renew, nor suspend, or revoke any certificate of registration, however, for any of these causes unless the person accused has been given at least five days' notice in writing of the charge against him and a public hearing by the board.

Upon the hearing of any such proceeding, the board may administer oaths and may procure by its subpoena, the attendance of witnesses and the production of relevant books and papers ('27, c. 316, §17, eff. July 1, 1927; Apr. 20, 1929, c. 270, §17.)

**5846-18. Fees.**—The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering shall be \$10.

The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice as an apprentice is \$2.00.

The fee to be paid for the renewal of a certificate of registration to practice barbering is \$2.00, and for the restoration of an expired certificate, \$5.00.

The fee to be paid for the renewal of a certificate of registration to practice as an apprentice is \$1.50, and for the restoration of an expired certificate, \$3.00.

The fees for examinations and certificates as required in this act shall be paid in advance to the secretary of the board of examiners and shall be deposited by him in the state treasury to be disbursed by the secretary on the order of the chairman in payment of expenses lawfully incurred by the board. ('27, c. 316, §18, eff. July 1, 1927; Apr. 20, 1929, c. 270, §18.)

**5846-19. Violations a misdemeanor.**—Each of the following constitutes a misdemeanor:

(a) The violation of any of the provisions of Section 1 of this act.

(b) Permitting any person in one's employ, supervision or control to practice as a registered barber, registered apprentice or student unless that person has a certificate of registration as a registered barber, registered apprentice or student's permit.

(c) Obtaining or attempting to obtain a certificate of registration for money other than the required fee, or any other thing of value, or by fraudulent misrepresentation.

(d) Practicing or attempting to practice by fraudulent misrepresentations.

(e) The wilful failure to display a certificate of registration as required by Section 14, and

(f) The use of any room or place for barbering which is also used for residential or business purposes except the sale of hair tonics, lotions, creams, cutlery, toilet articles, cigars, tobacco, candles in original package and such commodities as are used and sold in barber shops, and except that shoe-shining and an agency for the reception and delivery of laundry, or either, may be conducted in a barber shop without the same being construed as a violation of this section, unless a substantial partition of ceiling height separates the portion used for residential or business purposes and where a barber shop is situated in a residence, poolroom, confectionery, store, restaurant, garage, clothing store, liquor store, hardware store or soft drink parlor there must be an outside entrance leading into said barber shop independent of any entrance leading into such business establishment, except that this provision as to an outside entrance shall not apply to barber shops in operation at the time of the operation of the passage of this act at the time of the passage of this act, and except that a barber shop and beauty parlor may be operated in conjunction, without the same being separated by partition of ceiling height.

(g) The failure or refusal by any barber or other person in charge of any barber shop or any person in barber schools or colleges doing barber service work, to use separate and clean towels for each customer or patron, or to discard and launder each towel after once being used.

(h) The failure or refusal by any barber or other person in charge of any barber shop or barber school or barber college to supply clean hot and cold water in such quantities as may be necessary to conduct such shop, or the barbering service of such school or college in a sanitary manner, or the failure, or refusal of any such person to have water and sewer connections from such shop, or barber school or college, with municipal water and sewer systems where the latter are available for use, or the failure or refusal of any such person to maintain a receptacle for hot water of a capacity of less than five gallons.

(i) For the purposes of this act barbers, students, apprentices or the proprietor or manager of a barber shop or barber college or barber school shall be responsible for all violations of the sanitary provisions of this act, and if any barbershop or barber college or barber school, upon inspection, shall be found to be in an unsanitary condition, the person making such inspection shall immediately issue an order to place the said barber shop or barber school or barber college in a sanitary condition in a manner and within a time satisfactory to the Board and for the failure to comply with such order the Board shall immediately file a complaint for the arrest of the persons upon which the order was issued and any licensed barber who shall fail to comply with the rules and regulations adopted by the Minnesota Barbers' Examining Board with the approval of the Minnesota State Department of Health, or the violation or commission of any of the offenses described in Section 16, subdivisions a, b, c, d, e, f, g, h, i, and of Section 19 subdivisions a, b, c, d, e, f, g, h, i, shall be fined not less than \$10.00 or 10 days and not more than \$100.00 or 90 days or both. ('27, c. 316, §19, eff. July 1, 1927; Apr. 20, 1929, c. 270, §19; Apr. 26, 1929, c. 386, §1; Apr. 22, 1935, c. 229, §9.)

**5846-19 1/2. To have receptacles for towels.**—In each barber shop there shall be provided a receptacle or receptacles for soiled towels. Each barber shall, immediately after the completion of the service to the customer, place the towel or towels used on said customer in said receptacle and no towel shall be withdrawn from said receptacle and used on any customer until the towel has been laundered. A violation of any provision of this section shall be a misdemeanor. (Act Apr. 20, 1929, c. 270, §20.)

**5846-20. Perjury.**—The wilful making of any false statement as to a material matter in any oath or affi-

davit which is required by the provisions of this act is perjury and punishable as such. ('27, c. 316, §20, eff. July 1, 1927; Apr. 20, 1929, c. 270, §21.)

**5846-21. Board of Barbers Examiners created.**—Terms.—A board, to be known as the Board of Barber Examiners, is established, to consist of three members appointed by the governor. Each member shall be a practical barber who has followed the occupation of a barber in this state for at least five years immediately prior to his appointment. Each member shall furthermore be a graduate from the eighth grade of a grammar school or have an equivalent education, and must have knowledge of the matters to be taught in approved schools of barbering as set forth in Section 7 hereof, and shall be qualified and competent to pass upon all matters likely to come before said board. One of said members shall be a member or recommended by a union of journeymen barbers which shall have existed at least two years, and one of said members shall be a member of or recommended by the Master Barbers Association of Minnesota.

The members of the first board appointed shall serve for three years, two years and one year, respectively, as appointed, and members appointed thereafter shall serve for three years. The governor may remove a member for cause.

Members appointed to fill vacancies caused by death, resignation or removal shall serve during the unexpired term of their predecessors. Provided, that the present members of the board of barber examiners shall remain in office until the completion of their respective terms. ('27, c. 316, §21; Apr. 20, 1929, c. 270, §22.)

**5846-22. Officers—Compensation.**—The board shall elect a chairman and secretary. It shall adopt and use a common seal for the authentication of its orders and records.

The secretary shall keep a record of all proceedings of the board and shall turn over to the treasurer of the state, all moneys collected, at least once a month.

Each member of said board shall give a bond in the sum of \$5,000 with sureties to be approved by the secretary of state, conditioned for the faithful performance of his duties, and shall take the oath provided by law for public officers.

A majority of the board, in meeting duly assembled, may perform and exercise all the duties and powers devolving upon the board.

The secretary of the board shall receive as compensation \$3,000 per annum, and the other members of the board shall receive a compensation of \$10 per day for each [day] of actual service in the discharge of their duties as such, and in addition thereto, all members of the board, including the secretary, shall be reimbursed and receive their necessary traveling expenses incurred in the discharge of their duties, both salaries and expenses to be paid only and from out of the fund created by fees collected in the administration of this act. Each member of the board shall file monthly with the secretary of said board, a complete report showing his activities during the preceding month, and stating in detail the places, shops, schools or colleges visited or inspected by such board member. The board shall report annually to the governor, a full statement of the receipts and disbursements of said board, and also a full statement of its doings and proceedings during the year, with which recommendations as it may deem expedient.

The board shall have authority to employ such inspectors, clerks, deputies and other assistants as it may deem necessary to carry out the provisions of this act.

Any funds in the state treasury to the credit of the present board of barber examiners shall be transferred to and made available for use by the board established under the provisions of this act. ('27, c.

316, §22, eff. July 1, 1927; Apr. 20, 1929, c. 270, §23.)

If a member of the board of barber examiners spends any part of the day in the discharge of his duties as such member, he is entitled to charge the full \$10. Op. Atty. Gen., June 29, 1931.

A member of the board should not be permitted to charge a per diem while attending a national convention of barbers. Op. Atty. Gen., June 29, 1931.

Under Laws 1933, c. 413, salary of secretary of barber board must be reduced in a proximate percentage as reductions made by heads of departments, while compensation of other members of board are governed by rules set forth in opinion of June 28. Op. Atty. Gen., June 29, 1933.

**5846-23. Board to make rules and regulations.**—The board shall have authority to make reasonable rules and regulations for the administration of the provisions of this act and prescribe sanitary requirements for barber shops and barber schools, subject to the approval of the state board of health. Any member of the board or its agents or assistants shall have authority to enter upon and to inspect any barber shop or barber school at any time during business hours. A copy of the rules and regulations adopted by the board shall be furnished by the board to the owner or manager of each barber shop and barber school, and such copy shall be posted in a conspicuous place in such barber shop or barber school.

The board shall keep a record of its proceedings relating to the issuance, refusal, renewal, suspension and revocation of certificates of registration. This record shall also contain the name, place of business and residence of each registered barber and registered apprentice and the date and number of his certificate of registration. This record shall be open to public inspection at all reasonable times. ('27, c. 316, §23, eff. July 1, 1927; Apr. 20, 1929, c. 270, §24.)

An ordinance of city prescribing hours when barber shops may be open for business violates due process clauses of state and Federal Constitutions. State v. Johannes, 194M10, 259NW537. See Dun. Dig. 1647.

Barber board has power to revoke license of shop failing to comply with reasonable order given by inspector. Op. Atty. Gen., Apr. 19, 1933.

City of Austin may pass ordinance regulating barbers and providing for inspection by local health officers and specifying hours during which shop may be open. Op. Atty. Gen. (33a-2), Nov. 13, 1934.

**5846-24. Not to serve certain persons.**—No person practicing the occupation of a barber in any barber shop, barber school, or college in this state shall knowingly serve a person afflicted in a dangerous or infectious state of the disease with erysipelas, eczema, impetigo, syphilis, tuberculosis, or any other contagious or infectious disease. Any person so afflicted is hereby prohibited from being served in any barber shop, barber school or college in this state. Any violation of this section will be considered a misdemeanor as provided for in this act. ('27, c. 316, §24, eff. July 1, 1927; Apr. 20, 1929, c. 270, §25.)

**5846-25. Provisions severable.**—If any portion of this act is declared unconstitutional by a court of competent jurisdiction, it shall not affect the validity of the remainder of the act which can be given effect without the invalid portion. ('27, c. 316, §25, eff. July 1, 1927; Apr. 20, 1929, c. 270, §26.)

**5846-26. Laws repealed.**—Session Laws 1921, Chapter 424, Session Laws 1925, Chapter 252, and Sections 5823 to 5846, both inclusive, of General Statutes of Minnesota, 1923, and all other acts or parts of acts inconsistent with the provisions of this act are hereby repealed. ('27, c. 316, §26, eff. July 1, 1927; Apr. 20, 1929, c. 270, §27.)

**5846-26½. Governing body of municipalities may regulate hours.**—The governing body of any city or village of this state may regulate, by ordinance, the opening and closing hours of barber shops within its municipal limits. (Act Apr. 22, 1935, c. 229, §10.)

Ordinance attempting to fix hours of opening or closing of barber shops is unconstitutional. Op. Atty. Gen. (477h-36), Aug. 7, 1936.

## HAIR DRESSERS AND BEAUTY CULTURISTS

**5846-27. Unlawful to engage in occupation or conduct shops except as authorized.**

Act does not provide that compensation to beauty culturists must come directly from one who receives treatment. Luzier Special Formula Laboratories v. M., 189M151, 248NW664.

Occupation of beauty culturist is a lawful occupation, but of a nature similar to that of barbering and subject to regulation. Id.

Act is constitutional. Id.

City has power to regulate beauty culturists and hair-dressing. Op. Atty. Gen., Aug. 7, 1933.

**5846-28. Definitions—places where taught or practiced.**—For the purposes of this act, the following definitions shall be adopted and understood to be included within the meaning of the Act.

(a) Any person who engages in general public practice for compensation or other reward in any one or any combination of the following practices, to-wit: arranging, dressing, curling, waving, cleansing, singeing, bleaching, coloring, or similar work upon the hair of any living person by any means, or slight hair trimming of women, as a part of women's hairdressing; the use of cosmetic preparations, antiseptics, tonics, lotions, or creams, aided with the hands or mechanical or electrical apparatus, or appliances used in massaging, cleansing, stimulating, manipulating, exercising, beautifying, the scalp, face, neck, arms, bust or upper part of the body for the purposes of beautification, shall be defined as and construed to be practicing hairdressing and beauty culture, provided, however, that no provision of this act shall in any manner be construed to apply to manufacturers of cosmetics, or their representatives or employees.

(b) An operator is any person who has secured a license to engage in and engages in and follows the practices as named within this Act.

(c) A manager-operator is any person of legal age who owns, operates, conducts or manages a hairdressing and beauty culture shop or school; or who instructs in practical hairdressing and beauty culture work; provided, however, that it shall be lawful for any person to own, operate, conduct or manage a hairdressing and beauty culture shop or school without being licensed as a manager-operator if such person does not instruct in or practice any of the practices as defined in this Act but does employ one or more manager-operators in said shop or school to manage same or instruct therein.

(d) Hairdressing and beauty culture shall be practiced only in a room or rooms not used for sleeping or residential purposes, completely partitioned off from living quarters and must be equipped with hot and cold running water and with sewer connections. Where water and sewer connections are not available there must be maintained a proper receptacle for hot water of a capacity of not less than five gallons, and such cesspool or other method for the disposal of sewage and waste matter as may be approved by the local health authorities or local municipal ordinances.

(e) All beauty shops shall be registered with the Board by the owners thereof, annually on or before the 31st day of December, upon blanks provided for such purposes by the Board showing the names of the owners and the location of their respective shops, and no such shops shall be permitted to operate without such registration.

(f) Hairdressing and beauty culture shall be taught in a room or rooms not used for sleeping or residential purposes and such rooms must be equipped with sufficient hot and cold running water and with sewer connections to insure sanitation for all students in attendance. Text books and charts and proper equipment necessary to conduct a school efficiently must be maintained by the school.

(g) A school of hairdressing and beauty culture is a place where any person, firm or corporation operates and maintains a class to teach beauty culture as defined under this Act; or the individual dissemina-

tion of knowledge regarding hairdressing or beauty culture whether such person, firm, or corporation accepts compensation or not, shall be defined as a school of hairdressing and beauty culture. ('27, c. 245, §2, eff. July 1, 1927; Apr. 15, 1933, c. 264, §1.)

Beauty operators are not authorized to cut bangs, thin hair or give neck clips. Op. Atty. Gen. (33b-5), Dec. 2, 1937.

Operator cannot teach beauty culture in shop. Op. Atty. Gen. (33b-1), May 17, 1938.

(a).

A hair dye is a cosmetic. Op. Atty. Gen. (33b), July 5, 1934.

Demonstrator of cosmetics needs no license provided he is a manufacturer or a representative or employee of a manufacturer, regardless of the fact that he may or may not be engaged in general public practice for compensation. Id.

(c).

Age of majority of both sexes is now 21 years for all purposes. Op. Atty. Gen. (33B-7), March 10, 1939.

An instructor in a beauty school must be a licensed manager-operator to teach any branch of beauty culture, including hair cutting. Op. Atty. Gen. (33B-5), Sept. 6, 1939.

(d).

It is permissible for a customer to pass through living quarters and enter beauty shop from a door leading from living quarters but shop must be completely partitioned off and cannot be used in any manner for living quarters. Op. Atty. Gen., Feb. 3, 1934.

(e).

A licensed manager-operator cannot travel from town to town, rent a room in a hotel or a barber shop and operate from that location without having set place registered with board. Op. Atty. Gen. (33b), July 5, 1934.

(g).

A licensed Minnesota manager-operator teaching other licensed individuals or groups of operators advanced hairdressing would be conducting a school, but need not obtain a permit. Op. Atty. Gen. (33b-10), June 3, 1937.

#### 5846-30. Same—Appointment—Qualifications, etc.

Where a board member retires from office during fiscal year, new member appointed assumes office left vacant by retiring member. Op. Atty. Gen. (33b-8), Jan. 18, 1935.

#### 5846-31. Same—Meetings—Officers, etc.

Election of officers of board must be held on second Tuesday in January and not second Tuesday after July 1 of each year. Op. Atty. Gen. (33b-2), Jan. 18, 1935.

Board is not authorized to retain persons to investigate law violators to obtain evidence upon which to base prosecution. Op. Atty. Gen. (33b-11), July 30, 1935.

#### 5846-32. Same—Secretary-treasurer—Salary—Expenses—Bond.

Law makes no provision for assistant to secretary-treasurer, and there is no authority in board to bond an assistant. Op. Atty. Gen., Feb. 24, 1933.

Secretary-treasurer may not charge car fare and cost of lunches to board. Op. Atty. Gen., Feb. 24, 1933.

Opinion of June 28 with respect to reduction of salaries under Laws 1933, c. 413, §37, applies to secretary of board. Op. Atty. Gen., June 29, 1933.

Commission of Administration and Finance cannot change salary of secretary-treasurer of State Board of Hairdressing and Beauty Culture Examiners. Op. Atty. Gen. (33b-2), Feb. 25, 1935.

Secretary-treasurer is not entitled to extra salary because he did not take vacation. Op. Atty. Gen. (33b), Oct. 8, 1935.

#### 5846-33. Same—Compensation and expenses of members.

Members of board from Duluth and Minneapolis are entitled to expenses incurred, including meals while engaged in performance of board duties in St. Paul, but secretary-treasurer is not entitled to reimbursement for meals whether he lives in Minneapolis or St. Paul. Op. Atty. Gen., Nov. 13, 1933.

**5846-34. Qualifications of applicants for examinations and licenses—license fees.**—The Board shall determine the sufficiency of the preliminary qualifications of the applicants for admission to examinations for license or qualifications for license. The following preliminary qualifications shall be sufficient:

(a) An operator may be licensed as such under this Act upon the payment of a fee of Five Dollars (\$5.00), provided he is of good moral character, and free from contagious or infectious diseases, is at least sixteen (16) years of age, and have an eighth-grade school education or equivalent thereof, and shall have satisfactorily passed both practical and theoretical examinations as given by the Board. The examination of such applicants shall be conducted

under rules prescribed by such Board, and such examination shall include both practical demonstrations and written or oral tests, and shall not be confined to any specific system or method of hairdressing and beauty culture, and such examination shall be consistent with the practical and theoretical requirements as provided by this Act. If a student shall fail to pass such examination, he or she shall take further training before being admitted to another examination, such further training time shall be specified by the Board but shall not exceed two hundred (200) hours.

(b) A manager-operator may be licensed as such under this Act upon the payment of a fee of Ten Dollars (\$10.00) provided that he or she has practiced as an operator under the supervision of a manager-operator in this state for at least one year, and upon complying with all other requirements applicable to a manager-operator as provided for in this Act.

(c) Renewal license fees shall be as follows:

For Operator—\$2.00.

For Manager-operator—\$3.00.

('27, c. 245, §8, eff. July 1, 1927; Apr. 15, 1933, c. 264, §2.)

Laws 1933, c. 264, §2(b), imposes additional limitation upon manager-operator applicable to holders of manager-operator licenses upon expiration of such licenses. Op. Atty. Gen., May 24, 1933.

Where application was filed with board in 1927 for a manager-operator's license, showing that she was entitled to such license, and board requested applicant to make changes in application as to date and she refused and withdrew her application, and was refunded her fee of \$10, but she had all the time maintained that she was entitled to the license, and took an examination in 1935 for purpose of reinstating right under original application, court had no right to refuse license on account of amendment of statute in 1933. Op. Atty. Gen. (33b-9), Oct. 11, 1935.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

(b).

Time of work under temporary license to be included in year's requirement. Op. Atty. Gen. (33b-9), July 27, 1936.

#### 5846-35. Temporary licenses to operators

One who has practiced as operator in all branches of beauty work in another state must obtain an operator's license, and may not be granted a temporary license. Op. Atty. Gen., Feb. 3, 1933.

Temporary license is good until result of examination is known, and temporary license may be issued to a student for time intervening between examinations and information as to result. Op. Atty. Gen. (33b-9), Feb. 27, 1936.

Time of work under temporary license to be included in year's requirement. Op. Atty. Gen. (33b-9), July 27, 1936.

#### 5846-36. Schools—approval by board—instruction and course of instruction.

—It shall be competent for any person, firm, or corporation, conducting a hairdressing and beauty culture school, to apply to the Board annually on or before the 31st day of December, and receive from said Board a certificate of approval for such school, and to have such school rated by the Board as an approved school in hairdressing and beauty culture and placed upon its list of such approved schools, upon complying with the following provisions; each applicant, whether individual, firm or corporation, shall prior to the opening of such school, present to such Board an application containing the following information: (1) Full name of individual, firm or corporation; including all the members, owners and directors of such firm or corporation.

(2) The past occupation of such individual or individuals.

(3) A complete financial statement showing the financial worth and responsibility of the individual or individuals constituting the firm or corporation.

(4) A brief plan of operation.

Upon receipt of such application the Board shall within a reasonable time determine the qualifications of the person or persons, firm or corporation seeking such application, and the issuance of such permit, license or certificate of registration shall be purely at the discretion of said Board. Provided that the

Board may refuse to grant or renew any such certificate to any individual, firm or corporation guilty of fraud in making application therefor or at any time found guilty of a felony, immorality, or grossly unprofessional or dishonest conduct. Every beauty culture school in this state now holding a certificate of registration as such shall continue to practice as a registered beauty culture school without submitting a financial statement until such time as the Board shall request the same.

(a) The school shall maintain upon its staff one competent and qualified instructor for each thirty students or fraction thereof, and such school shall give and require a course of training and instruction of not less than one thousand (1,000) hours of class room work, divided into classified hours conforming with the curriculum issued by the Board, said hours not to exceed eight (8) hours per day, to include both practical instruction and study and recitation in sanitation, sterilization, and the use of antiseptic consistent with the practical and theoretical requirements as applicable to and as provided in this Act; and shall comply with all rules and regulations relating to schools as in this Act contained. Professional departments shall be separated from the student section of the school.

(b) No school, duly approved under this Act, shall refuse to teach any student, otherwise qualified, on account of race, creed or color. ('27, c. 245, §10, eff. July 1, 1927; Apr. 15, 1933, c. 264, §3.)

Board may reject application for beauty school even though applicant has complied with all requirements under section. Op. Atty. Gen., Dec. 11, 1933.

Board may refuse permit where school refuses to submit name. Op. Atty. Gen. (33b-10), Apr. 1, 1935.

Court has no jurisdiction where school refuses to give students statement of hours of training. Op. Atty. Gen. (33b-10), July 27, 1936.

(a) Professional department must be separated from student section in such manner as to permit customer to clearly distinguish between two departments but outside separate entrances are not necessary. Op. Atty. Gen., Feb. 3, 1934.

#### 5846-37. Same—Charges for student work.

Advertisements of hairdressers' schools or academies which do not state that work is done by students violates this section, even though the name of the school is mentioned as the advertiser. Op. Atty. Gen. (33b-7), Feb. 16, 1935.

#### 5846-39. Practitioners from other states.

Board may dispense with examination for license upon proof that applicant has practiced in another state for a period of one year. Op. Atty. Gen., Feb. 3, 1933.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### 5846-41. Display of license—renewal license.—

Every holder of a license granted by the said Board, as provided in this Act, shall display it in a conspicuous place in his place of business. All licenses shall expire December 31st of the year in which issued, unless renewed as herein provided. The holder of a license issued by the said Board shall annually, on or before the 31st day of December, renew his license and pay the renewal fee. If such license is not renewed on or before December 31st, of the year in which it is issued, such licensee shall pay a penalty of Five Dollars (\$5.00), in addition to the renewal fee of an operator's license and Ten Dollars (\$10.00), in addition to the renewal fee of a manager-operator's license. Such renewal license, however, shall be issued without examination within six (6) months from the time of expiration thereof. ('27, c. 245, §14, eff. July 1, 1927; Apr. 15, 1933, c. 264, §4.)

Board cannot extend time for renewal of license. Op. Atty. Gen., Jan. 14, 1929.

Amendment by Laws 1933, c. 264, is not strictly retroactive, and operators who secured their licenses before April 16, 1933, do not have to pay penalty. Op. Atty. Gen., May 17, 1933.

5846-41½. Provisions separable.—If any portion of this Act is declared unconstitutional by a court of competent jurisdiction, it shall not effect the validity of the remainder of the Act which can be given effect

without the invalid portion. (Act Apr. 15, 1933, c. 264, §5.)

#### 5846-42. Refusal of licenses and renewal licenses—Reissue.

(b) Board has right to revoke a license obtained by swearing falsely. Op. Atty. Gen. (33b), July 5, 1934.

#### 5846-44. Fees—Disposition of.

Assistants at examination may not be allowed their meals or carfare or both if they are residents of St. Paul or Minneapolis. Op. Atty. Gen. (33b-2), July 23, 1935.

Expense account for assistants at examination working per diem are to be prepared and verified in same manner as expense account of board members. Id.

### VETERINARIANS

#### 5847 to 5851. [Repealed.]

Repealed, effective May 1, 1937, by Laws 1937, c. 119, §15, post, §5851-15.

In action for negligent failure of veterinarian to diagnose hog cholera, evidence held to sustain finding of negligence. Bekkemo v. E., 186M108, 242NW617.

In action against veterinarian negligently failing to correctly diagnose hog cholera, evidence held sufficiently certain and definite to prove damages. Bekkemo v. E., 186M108, 242NW617. See Dun. Dig. 7488c.

There is but one school of veterinary medicine. Bekkemo v. E., 186M108, 242NW617. See Dun. Dig. 7487.

#### Annotations under 5847.

Vaccination of hogs was negligently performed in that there was either an insufficient amount of serum used or that serum lost its potency because of failure to keep at proper temperature. Ziegler v. D., 204M156, 283NW 134. See Dun. Dig. 7487.

#### Annotations under 5848.

Co-operative cannot be formed to practice profession of veterinarian or for the purpose of employing a veterinarian. Op. Atty. Gen. (465), Jan. 12, 1937.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

#### Annotations under 5849.

Veterinarian must pay annual renewal fee to practice. Op. Atty. Gen. (303c-10(a)), May 21, 1936.

5851-1. State Board of Veterinary Medical Examiners Created; Officers; Duties; Compensation.—That there be and is hereby created a state veterinary examining board, hereinafter in this act referred to as the board, which shall consist of five qualified veterinarians appointed by the governor. Each of said appointees shall have practiced veterinary medicine in this state for at least five years prior to his or her appointment, and each such appointee shall be a graduate of a reputable veterinary college. Each member of said board shall be appointed for a term of five years; provided, however, that the first board appointed by the governor pursuant to this act shall consist of five members who shall hold office for one, two, three, four and five years respectively and said first board shall be appointed by the governor within 60 days after this act shall take effect.

Whenever the occasion arises pursuant to this act for the appointment of a member of said board by the governor, the board of trustees of the Minnesota State Veterinary Medical Society shall recommend to the governor, at least 30 days in advance of the date that such appointment is to be made, three veterinarians qualified to serve on said board for each such appointment so to be made, and the governor may appoint one of said persons so recommended to fill such vacancy.

The board shall elect from its number a president and a secretary-treasurer. Said board shall have a seal, and have the power to administer oaths and take testimony. Said board shall make, alter or amend such rules and regulations as may be necessary to carry into effect the provisions of this act. It shall also hold meetings at the State Capitol for the examination of applicants for license to engage in veterinary practice on the Tuesday preceding the second Wednesday in January and July in each year, and it may hold such other meetings as it may deem necessary; but no meeting shall exceed three days duration. Each member shall receive \$10.00 a day for actual services together with mileage at the rate of five cents per mile for necessary travel. Such fees

and mileage shall be paid out of the funds of the board.

The board shall have the power to provide for its office and necessary furniture, fixtures and supplies and to appoint and employ, and, at will, to remove and discharge such officers, agents and other employees of said board as it may deem necessary to perform its duties, and to fix the salaries and define the duties of such officers, agents and employees.

The secretary shall conduct all correspondence necessary to carry out the provisions of this act; he shall also keep a record of all proceedings including the name of every applicant for registration or examination, which record shall show the age of the applicant, the extent of his study and practice, and the name of the veterinary college from which he has graduated and the date of such graduation. Such record shall be prima facie evidence of the matters therein contained. The secretary of the board shall receive such compensation as the board may provide.

The members of the state veterinary examining board heretofore appointed and now holding office, shall continue in office until the appointment and qualification of members of such board as herein provided. (Mar. 31, 1937, c. 119, §1.)

Appointment need not be made from list recommended by board of trustees. Op. Atty. Gen. (465a), Jan. 26, 1939.

While board might employ an investigator to gather evidence against unlicensed practitioners it is wholly without authority to reimburse a local association of veterinarians for expenses incurred in investigations. Op. Atty. Gen. (465a), May 15, 1939.

**5851-2. Qualifications of Applicants for License; Form of Application.**—Application for a license to practice veterinary medicine in this state shall be made to said board and shall be upon a form furnished by said board and shall be accompanied by satisfactory evidence that the applicant is at least 21 years of age, is of good moral character and has received a diploma conferring the degree of Doctor of Veterinary Medicine or its equivalent from some reputable veterinary school approved by the board. Such application shall contain any other information that the board may, in its sound judgment, require. If the board deems it advisable, it may require that such application be verified by the oath of the applicant. (Mar. 31, 1937, c. 119, §2.)

**5851-3. Application Fee; Examination.**—Upon filing such application and any other papers, affidavits or proof that said board may require, together with the payment to said board of a fee of \$25.00, the board, if satisfied, shall issue to the applicant for license, an order for examination. Every applicant for a license shall submit to a theoretical or practical examination, or both, as designated by the board. The examination may be oral or written or both. (Mar. 31, 1937, c. 119, §3.)

Original \$25 fee for examination should also include license fee up to next annual date of registration, which is the May 1st succeeding date of examination and licensing. Op. Atty. Gen. (465c), July 20, 1939.

**5851-4. Board to Issue License.**—The board shall issue to every applicant who has successfully passed the required examination and who shall have been adjudged to be duly qualified to practice veterinary medicine, a license to practice. (Mar. 31, 1937, c. 119, §4.)

**5851-5. License Subscribed by Board Members and Sealed.**—The license shall be subscribed by the members of the board and shall have affixed to it by the secretary-treasurer the seal of the board. (Mar. 31, 1937, c. 119, §5.)

**5851-6. License to be Recorded.**—The license, before issued, shall be recorded in a book to be kept in the office which the board shall establish for the purpose of carrying out the provisions of this act. The number of the book and the page therein containing the recorded copy of the license shall be noted upon the face of the license. These records shall be open

to public inspection with proper restrictions as to their preservation. (Mar. 31, 1937, c. 119, §6.)

**5851-7. Annual Registration.**—Each person now qualified to practice veterinary medicine in this state, or who shall hereafter be licensed by the board to engage in such practice, shall register with the board annually before the first day of May in each year, and thereupon the license of such veterinarian shall be renewed for such calendar year.

The fee for such annual registration shall be \$2.00 and shall be paid by each licensed veterinarian in this state to the secretary of said board before the first day of May in each year.

Any such veterinarian failing so to register and pay the annual registration fee before May 1, in each year as hereinbefore provided, shall pay to the secretary-treasurer of said board the sum of \$5.00 before his said license shall be renewed; provided, however, that in the event any such licensed veterinarian fails to register and to pay the registration fee provided herein within sixty days after May 1, in any such year, then and in that event said board shall revoke his or her license to practice veterinary medicine in this state.

Any person who at the time of the passage of this act shall be legally licensed to practice veterinary medicine in this state shall be entitled to receive a license to continue such practice upon making application to the board and complying with the terms of this section for annual registration. (Mar. 31, 1937, c. 119, §7.)

Op. Atty. Gen. (465c), July 20, 1939; note under §5851-3. New licenses should be issued to all veterinarians who were licensed to practice as such at time of passage of act. Op. Atty. Gen. (465c), July 22, 1937.

All rights and privileges which may have accrued under former act were abrogated and discontinued. Op. Atty. Gen. (465a), Jan. 26, 1939.

**5851-8. Revocation of License.**—On hearing, the board shall revoke any license or renewal which is obtained by fraud or when the holder is guilty of gross moral or professional misconduct. The board may deny a renewal of license, subject to review by the courts. (Mar. 31, 1937, c. 119, §8.)

**5851-9. License to be filed with clerk of district court; clerk to keep record.**—Every person now holding a license from the board shall file it for record with the clerk of the District Court in the county in which he resides, within sixty days after the date that this act takes effect, and every person hereafter licensed by the board shall file said license for record with the clerk of District Court in the county in which he resides within sixty days after the date when he commences to practice veterinary medicine in such county. Upon removal to another county he shall file his license in like manner. It shall not be necessary to record the annual renewal of such license. The clerk of court's fees for filing such license for record shall be \$1.00.

Such clerk shall keep, in the record book of such licenses, an index thereof, showing the date and page of the record, and in January of each year shall furnish to the secretary of the board a list of licenses so filed. Upon notice to the clerk of the death or removal of a licensee or of a revocation of a license, he shall note the same upon the record of such license. (Mar. 31, 1937, c. 119, §9.)

Persons who had licenses recorded with clerks of district courts prior to taking effect of act need not record them, unless new licenses are issued. Op. Atty. Gen. (465c), June 17, 1937.

**5851-10. Unlawful to Practice Veterinary Medicine without License.**—It shall be unlawful for any person to practice veterinary medicine or any branch thereof, in the state of Minnesota, without having first secured a license as provided in this act, and any person violating the provisions of this section shall be guilty of a gross misdemeanor and punishable therefore according to the laws of the state of Minnesota. (Mar. 31, 1937, c. 119, §10.)

**5851-11. Corporations not to Practice Veterinary Medicine.**—It shall be unlawful in the state of Minnesota for any corporation to practice veterinary medicine, or to hold itself out or advertise itself in any way as being entitled to practice veterinary medicine or to receive the fees, or portions of fees, or gifts or other emoluments or benefits derived from the practice of veterinary medicine or the performance of veterinary services by any person whether such person be licensed to practice veterinary medicine or not. Any corporation violating the provisions of this section shall be guilty of a gross misdemeanor and shall be fined not more than \$1000.00 for each offense, and each day that this act is violated shall be considered a separate offense. (Mar. 31, 1937, c. 119, §11.)

**5851-12. Definition of Practice of Veterinary Medicine.**—The practice of Veterinary Medicine, as the term is used in this Act, shall include the act or acts of prescribing, or applying any drug, medicine, biologic, biochemical or other material agency for the treatment of any animal, or for the testing of any animal for the diagnosis of any disease, or for the vaccination of any animal for the prevention of transmissible disease or diseases, or performing any operation for the treatment, relief or cure of any sick, diseased or injured animal for any fee or compensation or money or emolument, received or to be received, directly or indirectly, or to publicly profess to do any of these things. Nothing in this Act shall be construed to prohibit the dehorning of cattle or the castration of animals except the spaying of females; nor shall any provision of this Act prohibit anyone from rendering necessary gratuitous assistance in the treatment of any animal when the attendance of a licensed Veterinarian cannot be procured. The word "animal" as used in this act shall not include poultry and/or birds of any kind.

Any person who makes both a sale of and applies or offers to apply any drug, medicine, biologic preparation, including sera, vaccines, bacterins, tuberculin, mallein, Johnin or any other material agency for the treatment, vaccination or testing of any animal, belonging to or in the custody of the person to whom such sale is made, and from which sale such person derives any profit, commission, discount or other emolument, directly or indirectly, shall be presumed to have engaged in the practice of Veterinary Medicine, and any profit, discount, commission, gift or other emolument received directly or indirectly by such person so selling and applying said drug, biologic, biochemical or other material agency shall be presumed to include a charge for the services in applying the same.

Nothing in this act shall prohibit the sale of or offering for sale of or recommending of animal remedies upon the containers of which there are or are not printed directions for the use thereof, provided, however, that the word "recommending" as used herein shall not involve a diagnosis by the seller or his agent. (Mar. 31, 1937, c. 119, §12.)

A veterinarian may sell veterinary supplies such as serums, vaccines, drugs, etc., to the general public for self-administration to animals. Op. Atty. Gen. (465d), May 23, 1939.

**5851-13. Penalties Recoverable in Civil Action by Board.**—The penalties prescribed in this act may be recovered in a civil case instituted by the board in the name of the state, or by a criminal prosecution upon complaint being made. In case any county attorney shall omit or refuse to conduct such civil action or such criminal prosecution, the board may employ another attorney for that purpose. (Mar. 31, 1937, c. 119, §13.)

An order discharging an order to show cause and dismissing a criminal contempt proceeding can only be reviewed by certiorari, and fact that trial court may have based its order on mistaken belief that it lacked jurisdiction does not affect mode of review. *Spannaus v. L.*, 202M497, 279NW216. See Dun. Dig. 1391.

**5851-14. Fees and receipts collected by this act turned over to state treasurer and credited to board—expenditures by board.**—All fees collected on behalf of the board as provided by this act, and all receipts of every kind or nature received by said board shall be collected by the secretary-treasurer of the board, and shall be by him deposited in the State Treasury and credited to said board and such fund shall be known as the State Veterinary Examining Board Fund, and shall be under the sole and exclusive jurisdiction of said board for the purposes of carrying out the provisions of this act. All expenditures from said fund shall be upon vouchers issued and signed by the secretary-treasurer of said board and transmitted, together with an abstract of such expenditures, to the State Auditor for his approval. (Mar. 31, 1937, c. 119, §14.)

Fines collected upon conviction must be paid into county treasury, not being included in "all receipts of every kind and nature." Op. Atty. Gen. (465a), May 15, 1939.

**5851-15. Laws Repealed.**—Chapter 419 of the Session Laws of 1907 [§§5847 to 5851], and all amendments thereto are hereby repealed and any and all other laws inconsistent with the provisions of this act are hereby repealed, provided, however, that this act shall not repeal any part or portion of Chapter 112 of the Laws of 1923 [§§5432 to 5458]. If any part or portion of this act is declared invalid, such invalidity shall not affect the remaining portions of this act. (Mar. 31, 1937, c. 119, §15.)

Offices created under Act of 1907, c. 419, were discontinued by passage of this act. Op. Atty. Gen. (465a), Jan. 26, 1939.

**5851-16. Act Effective May 1, 1937.**—This act shall take effect on May 1, 1937. (Mar. 31, 1937, c. 119, §16.)

#### HORSESHOERS

**5852 to 5854. [Repealed.]**

Repealed by Laws 1929, c. 60.

#### STALLIONS

**5855. Horses used for breeding purposes to be registered.**

See §8553 for liens for services of stallions.

Whether sale of share in stallion circumvents provisions of registration statute is one of fact for county attorney to determine. Op. Atty. Gen. (630b), July 6, 1936.

**5868. Lien for service—action.**—Every stallion or jack owner complying with the provisions of this act shall have a lien on each mare served and first lien on the offspring resulting from such service, to the amount of the agreed service fee. Said lien shall become effective upon the birth of the foal or upon the fulfillment by the owner of said stallion or jack of his contract, or in case of removal or attempted removal of the mare without consent of the person holding the lien, from the county wherein her owner resides at the time of service, and it shall remain effective for a period of twenty-four (24) months from the date of service. In case his right of action accrues, the owner of such stallion or jack may file with any justice of the peace in the county, a written statement containing his cause for action, amount of his claim and a description of the mare upon which he has a lien, and the justice shall thereupon issue a summons as in other cases and an order to the constable to take the animal and her offspring if there be an offspring, and hold (her) or them subject to the order of the court. If upon trial, judgment be rendered for the plaintiff the court shall order a sale of the animal or animals to pay the judgment and costs. (As amended Apr. 8, 1937, c. 177, §1.)

Stallion owner's lien on mare does not have priority over previous mortgage but lien upon off-spring has priority over all other claims. Op. Atty. Gen., Mar. 19, 1934.

Procedure for filing and foreclosing liens for stallion services. Op. Atty. Gen. (520j), May 7, 1936.

Section 8553 has not been repealed by §5868. Op. Atty. Gen. (520j), July 10, 1936.

**ELECTRICIANS**

**5872. State board of electricity—Definitions.**—That the term "Master Electrician" for the purposes of this act shall be construed to mean a person having the necessary qualifications, training, experience and technical knowledge to properly plan, lay out and supervise the installation of wiring, apparatus and equipment for electric light, heat, power and other purposes in accordance with the standard rules and regulations governing such work.

The term "Journeyman Electrician" for the purposes of this act shall be construed to mean a person having the necessary qualifications, training, experience, and technical knowledge to wire for, install and repair electrical apparatus and equipment in accordance with the standard rules and regulations governing such work.

The term "Special Electrician" for the purposes of this act shall be construed to mean a person having the necessary qualifications, training and experience in wiring for, installing or repairing special classes of electrical apparatus or equipment; or making minor alterations, extensions, and repairs to existing electrical systems in cities, towns or villages under the third class.

The term "Electrical Contractor" for the purposes of this act shall be construed to mean any person, firm, co-partnership, corporation, association or combination thereof, who undertakes or offers to undertake with another to plan for, lay out, supervise and install or to make additions, alterations and repairs in the installation of wiring apparatus and equipment for electric light, heat and power for a fixed sum, price fee, percentage or other compensation.

The State Board of Electricity shall consist of five members, residents of the state, appointed by the Governor, each for a term of five years, and until his successor qualifies, of whom two shall be master electricians, who shall be contractors, two journeymen electricians, and one a consulting electrical engineer or electrical inspector of a city of the first class. Vacancies shall be filled in the same, and from the same class from which the retiring member belonged. The board shall select from its members a president, secretary and treasurer, prescribe rules for the management of its affairs and adopt a seal. Each member shall receive \$10.00 a day for actual services rendered, and in addition thereto actual expenses for employees, rent, office supplies, postage and printing as the board may allow; all to be paid out of the treasury of the said board. The board shall meet at least once a month and may meet at any other time at places designated by the board, for the purpose of conducting examinations and transacting such other business necessary in the conduct of its affairs. The present board of electricity shall be continued, and the Governor shall appoint new members as designated herein when the terms of the present members shall expire.

All fees collected under the provision of this act shall be devoted to the uses of the State Board of Electricity and before the second Monday in January, annually, the board shall report to the Governor in writing, the items of its receipts and disbursements for the preceding year. The State Board of Electricity shall have jurisdiction, and is hereby empowered to enforce the provisions of this act. (As amended Apr. 21, 1937, c. 314, §1.)

Salary of secretary is subject to reduction under Laws 1933, c. 413, §37, under rules set forth in opinion of June 28. Op. Atty. Gen. June 29, 1933.

Board may not employ one of its own members as office or field man. Op. Atty. Gen. (290u), May 14, 1937.

In cities above third class a special license may only be issued to an electrician who does work of a special nature as defined in act, and in other municipalities, electricians who do work of a special nature, and electricians who make minor alterations, extensions and repairs to existing electrical systems, may receive special licenses. Op. Atty. Gen. (188c), July 9, 1937.

Board may see to it that provisions of law relating to minimum requirements for electrical work are complied with. Op. Atty. Gen. (188c), Oct. 14, 1937.

A lineman employed by village municipal light and power plant, who has sufficient experience to obtain special electrician's license, may perform work necessary to install electrical appliances and make minor changes, if he has obtained such license. Op. Atty. Gen. (188B), April 1, 1939.

Electrical work done on a U. S. Postoffice, or other government property, is not subject to jurisdiction of either local inspection and ordinances or the state laws. Op. Atty. Gen. (188B), Sept. 6, 1939.

**5873. Electrical contractor—journeyman or special electrician—licenses—temporary practice.**—No person shall operate as an electrical contractor unless such person be licensed as a Master Electrician. No individual, firm, copartnership or corporation shall engage in business as Electrical Contractors unless they have a licensed Master Electrician in their employ.

No person shall work as a Journeyman or Special Electrician unless such person be licensed as such by the State Board of Electricity, except that a person who shall furnish evidence satisfactory to the Board as having the required experience as herein set forth may make written application and pay the required fee to the State Board of Electricity, and may work as a Journeyman or Special Electrician until the next following examination, of which he shall be notified. (As amended Apr. 21, 1937, c. 314, §2.)

City may require plumbers and electricians operating under an independent contract to take out licenses under city ordinances before performing work on a federal building. Op. Atty. Gen. (338a), Mar. 15, 1935.

Persons or firms contracting with rural electrification administration must comply with act with respect to licensing master electricians and journeymen electricians. Op. Atty. Gen. (188c), July 9, 1937.

Linemen working for private contractor who do work ordinarily done by journeymen electricians must be licensed as such. Id.

It is not permissible to add a penalty on delinquent licenses. Op. Atty. Gen. (188c), Aug. 13, 1937.

School district cannot enter into contract with unlicensed electrician. Op. Atty. Gen. (188c), Aug. 24, 1937.

Reciprocal agreements may not be made with other states in connection with issuing licenses. Op. Atty. Gen. (188c), Oct. 6, 1937.

Building inspector of city of Duluth may not issue a permit to do electrical work to a person not licensed under state law. Op. Atty. Gen. (188b), Mar. 24, 1938.

A railroad company is not required to employ a master electrician, but journeymen electricians employed by railroad must be licensed, and men doing signal work are not required to be licensed unless they install or repair electrical apparatus or equipment. Op. Atty. Gen. (188), Sept. 2, 1938.

Engineers are not excepted from act, unless employed in an activity otherwise exempt. Op. Atty. Gen. (188c), Sept. 20, 1938.

Person or firm not having master electrician in its employ may not be an electrical contractor. Op. Atty. Gen. (188c), Oct. 25, 1938.

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5874. Bond of Master electrician—qualifications and licensing of Master, journeymen, and special electricians—fees.**—Every Master Electrician shall before receiving license as such give Bond to the state in the penal sum of Five Thousand Dollars, which Bond shall be approved by, and filed with said State Board of Electricity. This Bond to be conditioned upon the faithful performance of all work entered upon or contracted for by said master.

An applicant for a "Master Electrician" license shall furnish written evidence that he is a graduate of a 4 year electrical course of an accredited university or college; or that he is a graduate of an electrical trade school approved by the State Board of Electricity and has had at least three years of practical experience in electrical work; or that he has at least five years of experience in planning, laying out, supervising or installing wiring, apparatus or equipment for electric light, heat and power, and shall pay an examination fee of Five Dollars. After six months' experience had before the date when this Act shall go into effect, any person actually engaged in business as a Master Electrician at the time when this Act shall take effect may, upon filing with said board a verified

statement signed by him, reciting said facts, and upon payment of a fee of Five Dollars obtain a license to engage in business as a Master Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect.

An applicant for "Journeyman Electrician's" license shall furnish evidence in writing that he has had at least four years experience in wiring for, installing and repairing electrical apparatus and equipment for light, heat or power, and shall pay an examination fee of Three Dollars. After six months' experience had before the date when this Act shall go into effect, any person actually engaged as a Journeyman Electrician at the time when this Act shall take effect may, upon filing with said board a verified statement signed by him, reciting said facts, and upon payment of a fee of Three Dollars, obtain a license to engage as a Journeyman Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect.

An applicant for a "Special Electrician's" license shall furnish evidence in writing that he has had at least two years' experience in some special class of electrical work, and shall pay an examination fee of Two Dollars. Such special class of electrical work shall be specified on his license. After six months' experience had before the date when this Act shall go into effect, any person engaged as a Special Electrician at the time when this Act shall take effect may, upon filing with said board a verified statement signed by him, reciting said facts, and upon payment of a fee of Two Dollars, obtain a license to engage as a Special Electrician; provided, however, that said application is filed and said fee paid within six months after the time when this Act shall take effect. (As amended Apr. 21, 1937, c. 314, §3.)

An applicant doing business in a city of the first class at time of passage of Laws 1937, c. 314, could within six months after passage obtain a master electrician's license by registration, but statute does not change provisions of ordinances of city containing more stringent requirements than those set forth in the act. Op. Atty. Gen. (290u), May 14, 1937.

A master electrician by registration within six months after effective date of Laws 1937, c. 314, could be granted a journeyman electrician's license in lieu of master electrician's license without further examination. Id.

Where master electrician license expired prior to taking effect of Laws 1937, c. 314, and no application for a renewal was filed until after taking effect of new law, applicant must pay fee provided for under new act, and new license will take effect as of date of its issuance. Id.

Surety may refuse coverage of master electricians who farm out privileges of their license. Op. Atty. Gen. (188c), Oct. 25, 1938.

An alien may be granted an electrician's license. Op. Atty. Gen. (3M), April 27, 1939.

**5875. Additional fees after passing examinations.**—Every applicant for a "Master Electrician's" license who passes the examination shall pay an additional fee of \$10.00 before such license is issued, which fee shall keep his license in force for one year; and shall pay a renewal fee of \$10.00 each year. Every applicant for "Journeyman Electrician's" license who passes the examination shall pay an additional fee of One Dollar and Fifty cents before such license is issued, which fee shall keep his license in force for one year and shall pay a renewal fee of One Dollar and Fifty cents each year. Every applicant for a "Special Electrician's" license who passes the examination shall pay an additional fee of One Dollar before such license is issued, which shall keep his license in force for one year, and shall pay a renewal fee of One Dollar each year. (As amended Apr. 21, 1937, c. 314, §4.)

**5876. New examination after failure to renew license—disposition of fees—apprentices.**—If a licensee shall fail to renew his license for a period of two years or more after its expiration, such licensee may be required by the board to again take the examination. All examination and license fees shall be paid to the treasurer of the State Board of Electricity and shall be for the use of said board to carry

out the provisions of this Act. Any person may work as an apprentice to a licensed Electrician, but shall not do any electrical wiring for or installing electrical apparatus, or equipment for light, heat or power, except with a licensed electrician. (As amended Apr. 21, 1937, c. 314, §5.)

**5877. Employees excepted.**—Employees of public service corporations or municipal utilities distributing or selling electrical energy for light, heat or power, for operating street railway systems, or telephone or telegraph systems, shall not be required to hold licenses while doing electrical work on or in connection with property owned, leased or operated by any such municipality or corporation. Provided, however, that the rules and regulations of the railroad and warehouse commission, the State Fire Marshal, and of the Industrial Commission of Minnesota and all local municipal ordinances governing such work shall be observed. (As amended Apr. 21, 1937, c. 314, §6.)

Persons or firms contracting with rural electrification administration must comply with act with respect to licensing master electricians and journeymen electricians. Op. Atty. Gen. (188c), July 9, 1937.

Employees of water and light department of city of Duluth who do electrical work should be licensed. Op. Atty. Gen. (188c), Jan. 8, 1938.

Town is not required to employ master electrician or journeyman in connection with telephone lines owned by township. Op. Atty. Gen. (434a-8), Apr. 6, 1938.

Village under general law is not authorized to enact ordinance providing for licensing of electricians. Op. Atty. Gen. (477b-37), Mar. 24, 1938.

A railroad company is not required to employ a master electrician, but journeymen electricians employed by railroad must be licensed, and men doing signal work are not required to be licensed unless they install or repair electrical apparatus or equipment. Op. Atty. Gen. (188c), Sept. 2, 1938.

An engineer with an electrician's license may do electrical work on property other than on that belonging to the company. Op. Atty. Gen. (188c), Sept. 20, 1938.

Employees of public service corporation on municipal plan may not do electrical work on premises of others. Op. Atty. Gen. (188B), March 9, 1939.

Person employed by state to do electrical work on state owned property must have license. Op. Atty. Gen. (188c), July 20, 1939.

**5878. Disposition of fees—Report.**

Receipts of state board of electricity should be deposited with state treasurer, from which disbursements must be made in payment of members of board and employees. Op. Atty. Gen. (290u), May 14, 1937.

**5878-1. Second examination—time for—revocation of license—hearing—appeal.**—Any applicant who shall fail to pass the examination shall not be entitled to take another examination until at least six months thereafter, except that he may take an examination for a lesser grade.

Upon written complaint against any licensed electrician the board shall hold a hearing, written notice of which shall be given to the complainant, and to such licensed Electrician at least ten days in advance of such hearing. After hearing the evidence of both parties the board shall have the power to revoke or suspend such license, subject to appeal before a court of competent jurisdiction. (Added Apr. 21, 1937, c. 314, §7.)

**5879. Compliance with rules—electrical and safety codes as evidence—municipal requirements—certificate of inspection—penalty.**—All electrical wiring, apparatus and equipment for electric light, heat and power shall comply with the rules and regulations of the Railroad and Warehouse Commission, the State Fire Marshal and/or the Industrial Commission of the State of Minnesota under the authority of the state statutes and in conformity with approved methods of construction for safety to life and property. The regulations as laid down in the National Electrical Code and in the National Electrical Safety Code and in the National Electrical Safety Code as approved by the American Engineering Standards Committee shall be prima facie evidence of such approved methods; provided, however, that nothing herein contained shall prohibit any municipality from making and enforcing more stringent requirements

than those set forth herein, and that such requirements shall be complied with by all licensed electricians working within the jurisdiction of such municipalities.

No electrical installation shall be connected for use until proof has been furnished to the person, firm or corporation supplying electrical energy for such installation that the regulations above recited have been complied with. Proof of such compliance shall consist of a certificate furnished by a municipal or other recognized inspection department or officer, or if there is no such inspection department or officer, it shall consist of an affidavit furnished by the contractor or other person doing the wiring; certifying that there has been such compliance. For transient projects requiring temporary electrical service or for projects in process of construction, the person, firm, or corporation furnishing electric current shall not be required to obtain a certificate of inspection or an affidavit of compliance with the requirements above stated, until completion of said projects.

Any person who shall engage for a valuable consideration in the business of installing or repairing electrical wire or apparatus without having complied with the laws respecting registration and license, or who shall violate any of the provisions of this Act shall be guilty of a misdemeanor. (As amended Apr. 21, 1937, c. 314, §8.)

State statute respecting licensing of electrician does not affect city ordinances having more stringent requirements as to qualifications than the state law. Op. Atty. Gen. (290u), May 14, 1937.

School district cannot enter into contract with unlicensed electrician. Op. Atty. Gen. (188c), Aug. 24, 1937. Board discovering violation of law may file complaint. Op. Atty. Gen. (188a), Nov. 10, 1937.

Certificate of inspection is not required where a reconnection is made to equipment that has been used. Op. Atty. Gen. (118d), Jan. 26, 1937.

Person who does electrical work without license does not violate state law unless he receives consideration for such work. Op. Atty. Gen. (188c), Feb. 3, 1938.

Master electricians are not required to sign affidavits required by this section when they perform no function in connection with work. Op. Atty. Gen. (188c), Oct. 25, 1938.

**5879-1. Provisions severable.**—If any section of this Act, or any part thereof, shall be held invalid by any court of competent jurisdiction, such invalidity shall extend only to the section or part thereof affected, and every other section and part thereof shall be continued in full force and effect. (Added Apr. 21, 1937, c. 314, §9.)

**PRIVATE DETECTIVES**

**5880. License.**—It shall be unlawful for any person to act as or to hold himself out to be a private detective, or to establish or engage in the keeping, maintaining or operating of any private detective agency, or to carry on any private detective work within this state, without having first obtained a license therefor from the governor of the state of Minnesota upon application therefor on the payment of the fee and filing of the bond hereinafter provided for. Such application for license shall be granted or refused in the discretion of the Governor of Minnesota. (As amended Apr. 20, 1939, c. 305.)

Sec. 2 of Act Apr. 20, 1939, cited, provides that the act shall take effect from its passage.

One carrying on business of watchman's service, through employes, about residences of certain persons in a given district is not operating a private detective agency for which a license would be required, unless he undertook to detect person having committed crime. Op. Atty. Gen., Aug. 21, 1933.

One employing janitor-watchman to do janitor work and pull A.D.T. boxes every hour need not obtain a detective's license. Op. Atty. Gen., Mar. 23, 1934.

Governor possesses discretionary power to deny a license for just cause. Op. Atty. Gen. (828d), Nov. 5, 1936.

One establishing a private identification bureau for purpose of taking individual finger prints and filing them for protection of individuals and of installing complete systems of identification in banks, industries, stores and commercial businesses, must obtain a license and post bond under this act, though he does not intend to undertake any private or commercial investigation work. Op. Atty. Gen. (828c), June 3, 1937.

An undercover man employed by county attorney out of contingent fund need not obtain a license unless he holds himself out as a detective. Op. Atty. Gen. (876), August 17, 1939.

**5883. Employes of licensed detective.**

A foreign detective or his employe may operate in state in connection with cases originating outside state, but cannot otherwise operate without a license. Op. Atty. Gen. (876), May 5, 1939.

**CHAIN STORES**

**5887-1 to 5887-18. [Suspended.]**

This act (Apr. 12, 1933, c. 213), is suspended from operative effect for the years 1937, 1938, 1939 and 1940, by Act July 24, 1937, Sp. Ses., c. 93, post, §§5887-18a, 5887-18t. But see editorial note under §5887-18a.

**Annotations under 5887-1.**

A gross sales tax which classifies chain store owners for the imposition of a varying rate of taxation solely by reference to volume of their transactions denies equal protection provision of U. S. Const. Am. XIV, and is likewise violative of Minn. Const. Art. 9, §1. National Tea Co. v. S., 286NW360. See Dun. Dig. 1674, 9140.

**Annotations under 5887-11.**

Land forfeited to state for taxes is not subject to lien of judgment entered against state pursuant to Laws 1933, c. 213, §11. Op. Atty. Gen. (425d-2), Apr. 26, 1938.

**CHAIN STORES AND MAIL ORDER ESTABLISHMENTS**

**5887-18a. Definition of "person".**—The term "person" when used in this act shall include individuals, partnerships, trusts, associations, joint stock companies, corporations and firms however organized or whatever be the plan of operation. (July 24, 1937, Sp. Ses., c. 93, §1.)

The title of the act reads: "A bill for an act imposing and relating to a tax on the conducting of business by the system of mail order establishments and by the system of chain stores, and repealing Laws 1933, c. 213, as amended by Extra Session Laws 1933-34, c. 16." While the title calls for a repeal of Laws 1933, c. 213, as amended [§5887-1 to 5887-18], section 8 of General Provisions of this act [§5887-18a], merely suspends the operation of the old act, and section 11 of the new act [§5887-18t], contemplates the suspension of the later act after the year 1940. As to whether the separability provisions of section 10 [§5887-18s], will save the act is for a higher authority than this editor to determine.

**PART I**

**5887-18b. Tax imposed on certain chain stores.**—There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the system of chain stores from which are sold or otherwise disposed of at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following: fuel, lumber, building material, gasoline and oils and grain, if the gross sales by any such person of such produce or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, and excepting, further, cooperative associations organized under the laws of this state in good faith and not for the purpose or with the intent of evading the tax hereby imposed, and excepting, further, any persons who within this state produces, manufactures, prepares, distributes and sells at retail only, food products which he himself produces, manufactures or prepares, where such retail sales are made only from stores owned, operated and controlled exclusively by any such person, an annual tax for each calendar year during any part of which such taxpayer shall be so engaged which tax shall be computed at the rate provided in the following section. (July 24, 1937, Sp. Ses., c. 93, Pt. 1, §1.)

**5887-18c. Same—rates of tax.**—The tax imposed by Section 1 shall be at the following rates upon each store or mercantile establishment within this state under a single or common ownership, supervision or management:

1. \$10.00 on each of the first and second;
2. \$20.00 on each of the third and fourth;
3. \$30.00 on the fifth;
4. \$40.00 on the sixth;
5. \$50.00 on the seventh;

6. \$60.00 on the eighth;
7. \$70.00 on the ninth;
8. \$80.00 on the tenth;
9. \$95.00 on the eleventh;
10. \$110.00 on the twelfth;
11. \$125.00 on the thirteenth;
12. \$140.00 on the fourteenth;
13. \$155.00 on each from the fifteenth to twenty-fifth, inclusive;
14. \$175.00 on each from the twenty-sixth to thirty-fifth, inclusive;
15. \$200.00 on each from the thirty-sixth to forty-fifth, inclusive;
16. \$225.00 on each from the forty-sixth to fifty-fifth, inclusive;
17. \$250.00 on each from the fifty-sixth to sixty-fifth, inclusive;
18. \$300.00 on each from the sixty-sixth to the one hundred fiftieth, inclusive;
19. \$350.00 on each from the one hundred fifty-first and over. (July 24, 1937, Sp. Ses., c. 93, Pt. 1, §2.)

**5887-18d. Same—definition of "store" and "mercantile establishment"—common ownership.**—The terms "store" and "mercantile establishment", shall mean any fixed place at which said business is conducted even if such place is at the same time being used for other purposes. Conducting a business by the system of chain stores shall mean conducting such business from two or more stores under a single or common ownership, supervision, management or control. Two or more stores or mercantile establishments shall be treated as being under a single or common ownership, supervision, management or control if directly or indirectly owned or controlled by a single person or by any group of persons having a common interest in such stores or mercantile establishments, or if 20% or more of the gross revenues, net revenues, or profits from any such stores or mercantile establishments shall directly or indirectly be required to be immediately or ultimately made available for the beneficial use, or shall directly or indirectly inure to the immediate or ultimate benefit of any single person or any such group of persons having a common interest therein. (July 24, 1937, Sp. Ses., c. 93, Pt. 1, §3.)

**5887-18e. Same—basis of computation of tax—discontinuance of stores.**—The tax imposed hereby shall be computed on the basis of the number of stores or mercantile establishments under a single or common ownership, supervision, management or control during each calendar year; provided, however, that if any such store or mercantile establishment is established or is discontinued during any calendar year, the tax shall be computed in accordance with the number of stores in operation before and after such change, and for the purpose thereof a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month. (July 24, 1937, Sp. Ses., c. 93, Pt. 1, §4.)

#### PART II

**5887-18f. Definition of "mail order establishment."**—The term "mail order establishment" shall mean any place or places, order offices, warehouses and reserve depots in which are stored or kept or orders taken for goods, wares, and merchandise, owned or controlled directly or indirectly by a person engaged in selling same at retail within this State and at least fifteen per cent (15%) of whose total intrastate sales therefrom are filled and completed in response to orders from purchasers for such goods received by or through the mails, express, messenger or written communication, and which person issues and distributes price lists, circular advertisements, pamphlets or catalogs to prospective purchasers or customers describing such goods, wares and merchandise for sale. (July 24, 1937, Sp. Ses., c. 93, Pt. 2, §1.)

**5887-18g. Imposition of tax.**—There is hereby imposed upon every person engaged within the State of Minnesota in conducting a business by the method or system of mail order establishments from any of which are sold or otherwise disposed of in intrastate commerce at retail any goods, wares or merchandise, excepting any person selling at retail one or more of the following, horticultural and nursery products, seeds, tombstones and building stone, books, pamphlets, circulars, magazines, newspapers, greeting cards and church equipment, if the gross sales of any such person from such product or products shall, during any year for which the tax is imposed, equal or exceed 95 per centum of the total gross sales from all sources of any such person, an annual tax for each calendar year during any part of which such taxpayers shall be so engaged, which tax shall be computed as hereinafter provided for in this Part. (July 24, 1937, Sp. Ses., c. 93, Pt. 2, §2.)

**5887-18h. Same—rates of tax.**—The tax imposed by this Part shall be at the following rates upon each mail order establishment within this state under the same general management, supervision, ownership or control; as such general management, supervision, ownership and control is defined in Part I, Section 3.

1. \$200.00 on the first store;
2. \$300.00 on the second store;
3. \$400.00 on the third store;
4. \$500.00 on the fourth store;
5. \$600.00 on the fifth store;
6. \$700.00 on the sixth store;
7. \$800.00 on the seventh store;
8. \$900.00 on the eighth store;
9. \$1000.00 on the ninth store;
10. \$1100.00 on the tenth store;
11. \$1200.00 on each store thereafter. (July 24, 1937, Sp. Ses., c. 93, Pt. 2, §3.)

**5887-18i. Same—computation of tax—common ownership—number of establishments.**—The tax imposed by this Part shall be computed on the basis of the number of mail order establishments under a single or common ownership, supervision, management or control during each calendar year; provided, however, that if any such mail order establishment is established or is discontinued during any calendar year, the tax shall be computed in accordance with the number of establishments in operation before and after such change, and for the purpose thereof a fractional part of a month shall be disregarded unless more than one-half of a month, in which case it shall be considered as a month. (July 24, 1937, Sp. Ses., c. 93, Pt. 2, §4.)

#### GENERAL PROVISIONS

**5887-18j. Licensee to file annual statement with tax commission—payment—return by commission—notice.**—Every person on whom a tax is imposed by this Act shall make and file with the Minnesota Tax Commission on or before January 20 of each year, beginning with January 1938, on such forms as shall be prescribed therefor by said commission showing the number of stores or mercantile establishments, or mail order establishments under such single or common ownership, supervision, management or control during the preceding calendar year. The tax imposed shall be paid to the commission at the time of the filing of such return.

If any persons subject to a tax hereunder shall fail to make and file a return and pay the tax as hereinbefore provided within the time specified therefor, the said tax commission shall make and file a return for such person, based upon the best information which it possesses or is able to obtain, and shall assess a tax upon the basis of such return and shall add thereto a specific penalty of 10 per cent of the tax as so assessed. The commission shall forthwith mail to such person, if his address is known, a statement of the tax and penalty so assessed, and such

person shall pay said tax and assessment, together with interest thereon from the time it should have been paid at the rate of six per cent per annum, within 30 days after the mailing of such notice. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §1.)

**5887-18k. Enforcement by action.**—If any tax remains unpaid for more than 30 days after the same shall become due and payable, an action shall be brought in the name of the state against such person for the collection thereof in the manner in which other general debts due the state are enforced by action. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §2.)

**5887-18l. Refund—limitations—certificate—interest.**—A taxpayer who has paid, voluntarily or otherwise, or from whom there has been collected other than by suit as aforesaid, an amount in excess of the tax legally due, may file with said commission a claim for the refund of such excess. No such claim shall be entertained unless filed within two years after such tax was paid or collected. If the commission finds that the taxpayer has paid more than was legally due, it shall issue its certificate for the refundment of such excess, with interest at the rate of 6% per annum computed from the date of the payment or collection of the tax until the date of refund and the state auditor shall cause such refund to be paid out of the proceeds of the taxes imposed by this Act as other state moneys are expended. So much of the proceeds of the taxes imposed by this Act as may be necessary therefor are hereby appropriated for the purpose of such refundments. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §3.)

**5887-18m. False return or evasion—misdemeanor.**—Any taxpayer who shall willfully make a false return with intent to evade the payment of any tax imposed by this Act shall be guilty of a misdemeanor. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §4.)

**5887-18n. Tax commission to make rules—forms.**—The Minnesota Tax Commission shall administer this Act and enforce the collection of the taxes imposed hereby, and it may make and publish such rules and regulations, not inconsistent with this Act, as it may deem necessary to the efficient enforcement of this Act. It shall prepare blank forms for the returns required hereby, and shall distribute the same throughout the state and shall furnish them upon application, but the failure to receive such blanks shall not relieve any person from the obligation of making any return required of him by this Act. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §5.)

**5887-18o. Commission empowered to examine books, papers, etc., summon witnesses—statements from licensees.**—For the purpose of determining the correctness of any return or of determining whether any person should have made a return hereunder, the commission shall have power to examine or cause to be examined any books, papers, or records relevant to making such determinations. It shall further have power to require the attendance of any taxpayer or other person having knowledge or information relevant to such determination, to compel the production of books, papers or records, to take testimony in matters material to such determinations and to administer oaths or affirmations in any such connection. The commission may require any owner or manager of any store in the state to file with it a statement under oath showing the ownership, management and control of such store for the purpose of determining whether such store is subject to the tax hereby imposed. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §6.)

**5887-18p. Proceeds to general revenue fund.**—The revenue derived from taxes, interest, or penalties provided for in this act when collected shall be paid in-

to the general revenue fund of the state. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §7.)

**5887-18q. Suspension of Laws 1933, c. 218—credit of tax paid for 1937.**—No taxes shall be levied or assessed under Laws 1933, Chapter 213, for the year 1937 or thereafter, but said law shall remain in full force and effect with respect to any tax levied or assessed or which should have been levied or assessed thereunder for any year prior to 1937. If any taxes have been paid to the state under said law for the year 1937, the same shall be credited upon any tax for said year due under this Act from the taxpayer who made such payment. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §8.)

**5887-18r. One tax to exclude other tax.**—Any store or establishment taxable under Part II as a mail order establishment shall not be included in computing the tax imposed by Part I, if otherwise taxable hereunder. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §9.)

**5887-18s. Separability of provisions.**—If any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not impair or invalidate any other part or provision in the remainder of the Act; and, if any part or provision of this Act shall for any reason be adjudged by any court of competent jurisdiction constitutionally inapplicable to any case or situation within the terms of such part or provision, such judgment shall not impair or invalidate such part or provision as applied to any other case or situation within their terms; and, if any exception from the tax hereby imposed shall for any reason be adjudged by any court of competent jurisdiction invalid, the tax shall be imposed upon the taxable subject as to whom or which such exception has thus been held invalid. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §10.)

**5887-18t. Secession of tax after 1940.**—No tax shall be imposed or collected under this Act for the year 1941 and years subsequent thereto, but the provisions hereof shall remain in full force and effect with respect to any tax levied or assessed or which should have been levied and assessed for any year prior to 1941. (July 24, 1937, Sp. Ses., c. 93, General Provisions, §11.)

#### PLUMBERS

**5887-19. State Board of Health to supervise plumbing—rules and regulations—standards—approval—misdemeanor—inspectors.** (a) The State Board of Health may by regulation prescribe minimum standards which shall be uniform, and which standards shall thereafter be effective for all new plumbing installations, including additions, extensions, alterations and replacements connected with any water or sewerage disposal system, owned or operated by or for any municipality, institution, factory, office building, hotel, apartment building or any other place of business, regardless of location or the population of the city, village or town in which located. Such regulations, upon approval of the Attorney General and their legal publication, shall have the force of law, and the violation of any part thereof shall constitute a misdemeanor.

(b) The Board shall administer the provisions of this Act, and for such purposes may employ plumbing inspectors and other assistants. (Apr. 21, 1933, c. 349, §1; Apr. 23, 1937, c. 370, §1.)

Reciprocal and retaliatory legislation. 21MinnLawRev 371.

**5887-20. Cities or villages may adopt local regulations—State license to control.**—Any city or village having a system of water works or sewerage, may, by ordinance, adopt local regulations providing for plumbing permits, bonds, approval of plans, and inspections of plumbing, which regulations are not in

conflict with the plumbing standards on the same subject prescribed by the State Board of Health. But no city or village shall prohibit plumbers licensed by the State Board of Health from engaging in or working at the business, except cities which prior to April 21, 1933, by ordinance required the licensing of plumbers. (Apr. 21, 1933, c. 349, §2; Apr. 23, 1937, c. 370, §2.)

Evidence held to sustain finding that defendant violated city ordinance against covering and concealing plumbing pipes before inspection by proper city authorities. *State v. Beery*, 198M550, 270NW600. See *Dun*, Dig. 6776.

Owner of premises may not do plumbing work therein without license unless he occupies it himself, nor can he employ an unlicensed person to do work in a place he does not occupy. *Op. Atty. Gen.* (338a), May 5, 1934.

Cities and villages may incorporate by reference in an ordinance provisions of plumbing code formulated by state board of health. *Id.*

Charter of the city of Worthington permits it to adopt an ordinance licensing plumbers and regulating plumbing in conformity with Minnesota plumbing code of minimum standards and requirements adopted by the Minnesota State Board of Health, though it has a population of less than 5,000. *Op. Atty. Gen.* (477b-22), July 28, 1934.

City may require plumbers and electricians operating under an independent contract to take out licenses under city ordinances before performing work on a federal building. *Op. Atty. Gen.* (338a), Mar. 15, 1935.

Lake City under its charter may adopt ordinance classifying plumbers and establishing minimum requirements in order to obtain license. *Op. Atty. Gen.* (338a), Apr. 28, 1936.

Village may pass ordinance governing kind of material to be used in construction of building, requiring plumbers, plasterers and electricians to have license from village, regulate height of ceilings, so long as regulation tends to protect health, safety and comfort. *Op. Atty. Gen.* (477b-11), Jan. 22, 1937.

**5887-21. Violations to be reported to state board of health.**—Such local authority as may be designated by any such ordinance for the issuance of such plumbing permits and approval of such plans shall report to the State Board of Health persistent or wilful violation of the same and any incompetence of a licensed plumber observed by said local authority. (Act Apr. 21, 1933, c. 349, §3.)

**5887-22. Plumbers must be licensed in certain cities or villages—master and journeyman plumbers—plumbing on one's own premises—rules for examination.**—(a) In any city or village now or hereafter having 5,000 or more population, according to the last Federal or State census, and having a system of water works or sewerage, no person, firm or corporation shall engage in or work at the business of a master plumber or journeyman plumber unless licensed to do so by the State Board of Health. A master plumber may also work as a journeyman plumber. Provided, that anyone not so licensed may do plumbing work which complies with the provisions of the minimum standards prescribed by the State Board of Health on premises or that part of premises owned and actually occupied by him as his residence, unless otherwise forbidden to do so by a local ordinance.

(b) In any such city or village no person, firm or corporation shall engage in the business of installing plumbing nor install plumbing in connection with the dealing in and selling of plumbing material and supplies unless at all times a licensed master plumber, who shall be responsible for proper installation, is in charge of the plumbing work of such persons, firm or corporation.

(c) The State Board of Health shall prescribe rules and regulations not inconsistent herewith for the examination and licensing of plumbers. (Apr. 21, 1933, c. 349, §4; Apr. 23, 1937, c. 370, §3.)

Assistant superintendent of water department of International Falls need not have license. *Op. Atty. Gen.*, Sept. 14, 1933.

Cities and villages of 5,000 or more population may legally provide that local permits be issued only to those holding the state's licenses as master plumbers. *Op. Atty. Gen.* (338a), May 5, 1934.

Cities and villages of 5,000 or more population, which prior to passage of this law had in effect a local ordinance providing for local plumbers' licenses or permits,

can refuse a renewal of its own permits to a person not having a state license. *Id.*

State board of health has power to prescribe reasonable rules and regulations upon applicants for license, such as a certain period of experience or character of experience in connection with examination. *Id.*

Plumbing work in connection with privately owned water and sewage system must be done by licensed plumbers. *Op. Atty. Gen.* (338), Aug. 13, 1934.

A corporation cannot secure a license as a plumber, but must have its work done by a licensed plumber. *Op. Atty. Gen.* (338a), May 23, 1935.

A journeyman plumber can perform ordinary repair work. *Id.*

Corporation selling plumbing supplies and installing same must have licensed master plumber in its employ at all times. *Op. Atty. Gen.* (338a), June 4, 1935.

Utility men employed by city of Duluth who occasionally do plumbing work in connection with other work in city parks are not required to be licensed. *Op. Atty. Gen.* (188c), Jan. 8, 1938.

Provisions do not apply to janitors or engineers who are hired by the month or year by school district to perform services other than plumbing, if a major portion of their time is spent on some other service, though a school district would be required to employ a licensed plumber if plumbing work took up major portion of his time, or if outside help is employed for purpose. *Op. Atty. Gen.* (338a), August 30, 1939.

**5887-23. Definitions.**—(a) A journeyman plumber is any other than a master plumber, who, as his principal occupation, is engaged as an employee of, or otherwise working under the direction of, a master plumber, in the practical installation of plumbing.

(b) A master plumber is any person skilled in the planning, superintending and the practical installation of plumbing and otherwise lawfully qualified to contract for plumbing installations and conduct the business of plumbing, and familiar with the laws, rules and regulations governing the same.

(c) A plumber's apprentice is any person other than a journeyman or master plumber, who, as his principal occupation is engaged in working as an employee of a master plumber under the immediate and personal supervision of either a master or journeyman plumber in learning and assisting in the installation of plumbing. (Apr. 21, 1933, c. 349, §5; Apr. 23, 1937, c. 370, §4.)

**5887-24. Examiners.**—The State Board of Health shall appoint three examiners of whom one shall be a practical master plumber, one a practical journeyman plumber and one a representative of the Board, to be known as the plumbing examiners. Such master plumber and such journeyman plumber shall each receive his expenses and such sum per diem for each day actually engaged in duties connected with the carrying out of the provisions of this Act as the Board shall fix by its order. (Act Apr. 21, 1933, c. 349, §6.)

**5887-25. Applications.**—(a) Applications for plumber's license shall be made to the State Board of Health, with fees. Unless the applicant is entitled to a renewal, he shall be licensed by the State Board of Health only after passing a satisfactory examination by the examiners showing fitness. Fees for journeyman shall be two dollars for examination and one dollar for renewal, and for the master plumber \$25.00 for examination and \$15.00 for renewal. Licenses shall expire December 31st, but may be renewed upon application made the following January or February, but if in February only upon payment of an additional fee of one dollar for a journeyman and five dollars for a master plumber.

(b) The Board may issue revocable permits pending examination, and to assist in this may appoint, without compensation, and may authorize one of its examiners or plumbing inspectors to hold a special permit examination, the results to be reported in writing.

(c) All persons who shall furnish within ninety days after the passage of this Act satisfactory evidence to the Board that they were actually engaged in the business of a master plumber or journeyman plumber on January 1st, 1933, in any city or village of this state having 5,000 population or more, according to the last Federal or State census, shall be en-

titled to receive a license as such master plumber, or journeyman plumber, respectively, without examination, upon the payment of the fees hereinbefore provided. (Act Apr. 21, 1933, c. 349, §7; Apr. 23, 1937, c. 370, §5.)

A plumber originally seeking a state license under exemption clause and thereafter acting as local plumbing inspector without renewing his license may not be licensed on any renewal basis. Op. Atty. Gen. (338a), May 5, 1934.

Board may not legally accept a fee of \$10 for examination and then if examination test is satisfactory, require and accept an additional fee of \$15, but full fee must be made at time of application. Id.

**5887-26. Board may revoke licenses.**—The Board may revoke any license obtained through error or fraud, or if the licensee is shown to be incompetent, and for a wilful violation of any of its rules and regulations, or of local ordinances applicable to such work, or of this Act, or for knowingly aiding or abetting one to do plumbing work who is not properly licensed, or the employing by a master plumber of an unlicensed person to do plumbing work in places where licenses are required. The licensee shall have notice in writing, enumerating the charges, and be entitled to a hearing by the Board upon at least five days' notice, with the right to produce testimony. The Board may appoint, in writing, any competent person to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses. The decision of the Board shall be based on the testimony and records. One year from the date of revocations application may be made for a new license. (Apr. 21, 1933, c. 349, §8; Apr. 23, 1937, c. 370, §6.)

**5887-27. Violation a misdemeanor.**—Any person violating any of the provisions of this Act or who shall wilfully make any false representation to the Board of Health in applying for a license or permit shall be guilty of a misdemeanor. (Act Apr. 21, 1933, c. 349, §9.)

**5887-28. Fees to be paid to state treasurer.**—All fees received under this Act shall be paid by the State Board of Health to the State Treasurer and an amount of moneys equal to the amount so paid over by said Board to said Treasurer is hereby appropriated out of any moneys in the State Treasury not otherwise appropriated, to said Board for the purpose of carrying out the provisions of this Act. The salaries of the necessary employees of the Board and the per diem of the inspectors and examiners hereinbefore provided, their expenses and all incidental expenses of said Board in carrying out the provisions of this Act, shall be paid on order of the Board from such appropriation, but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided. (Act Apr. 21, 1933, c. 349, §10.)

**5887-29. State license—examination—application of act.**—The provisions of this Act which require state licenses to engage in the work or business of plumbing and the provisions which provide for the examination of applicants for such licenses shall only apply in cities, villages, or boroughs having a population of 5,000 or more. (Apr. 21, 1933, c. 349, §11; Apr. 23, 1937, c. 370, §7.)

**5887-29a. Provisions severable.**—A judicial determination that any section, paragraph, provision, clause or phrase of this Act is unconstitutional shall not in any way affect the constitutionality of any other section, paragraph, provision, clause or phrase thereof. (Added Apr. 23, 1937, c. 370, §8.)

#### STEAMFITTERS

**5887-30. Definitions.**—High pressure steam piping shall mean steam piping operating under a pressure of 15 pounds or more per square inch. (Apr. 23, 1937, c. 367, §1.)

**5887-30a. Industrial commission to supervise steam piping.**—(a) The State Industrial Commission shall supervise all high pressure steam piping in connection with all building in this state and may prescribe minimum standards which shall be uniform.

(b) The commission shall employ inspectors and other assistants to carry out this act. (Apr. 23, 1937, c. 367, §2.)

**5887-30b. City or village may provide for inspection.**—Any city or village may by ordinance prescribe rules and regulations for materials, construction and inspection of high pressure steamfitting and provide that it shall not be installed in any building except in accordance with plans approved or provided in said ordinances, and that no steamfitting shall be done except minor repairs upon prescribed conditions. (Apr. 23, 1937, c. 367, §3.)

**5887-30c. Shall issue permit.**—Such local authority as may be designated by any such ordinance for the issuance of such steamfitting permits and such approved plans shall report to the Industrial Commission persistent or wilful violations of the same and any incompetency of a licensed steamfitter observed by such local authority. (Apr. 23, 1937, c. 367, §4.)

**5887-30d. Steamfitters must be licensed.**—(a) No person, firm or corporation shall engage in or work at the business of a contracting steamfitter or journeyman steamfitter unless licensed to do so by the State Industrial Commission. But no license shall be required for minor repairs on existing installations providing such repairs shall be made in compliance with the prescribed minimum standards of the State Industrial Commission. A contracting steamfitter may also work as a journeyman steamfitter.

(b) No person, firm or corporation shall engage in the business of installing high pressure steam piping, nor install high pressure steam piping in connection with the dealing in and selling of high pressure steam material and supplies, unless at all times a licensed steamfitter, who shall be responsible for proper installation, is in charge of the high pressure steamfitting work of such person, firm or corporation.

(c) The State Industrial Commission shall prescribe rules and regulations not inconsistent herewith for the examination and licensing of steamfitting. (Apr. 23, 1937, c. 367, §5.)

Unlicensed boiler company could be employed by local licensed contractor to fabricate and install new front in a steam boiler. State v. Kenny Boiler & Mfg. Co., 202M 605, 279NW407. See Dun, Dig. 6794.

Bid of a firm to do high pressure steamfitting on a PWA job cannot be considered where bidder is not licensed to do high pressure steamfitting. Op. Atty. Gen. (707a), Jan. 14, 1939.

**5887-30e. Definitions.**—(a) A journeyman steamfitter is any other than a contracting steamfitter, who, as his principal occupation, is engaged in the practical installation of high pressure steam work.

(b) A contracting steamfitter is any person skilled in the planning, superintending, and the practical installation of high pressure steamfitting, and familiar with the laws, rules and regulations governing the same.

(c) A steamfitter's apprentice is any person other than a journeyman or master steamfitter, who, as his principal occupation, is engaged in learning and assisting in the installation of high pressure steamfitting. (Apr. 23, 1937, c. 367, §6.)

**5887-30f. Examiners.**—The Industrial Commission shall appoint three examiners, of whom one shall be a practical contracting steamfitter, one a practical journeyman steamfitter and one a member or employe of the commission, to be known as the steamfitting examiners. Each examiner, except the regular employe or the secretary of the commission, shall receive his expenses and such sum per diem for each day actually engaged as the commission shall fix by its order. (Apr. 23, 1937, c. 367, §7.)

**5887-30g. Application—fees.**—(a) Application for steamfitter's license shall be made to the State Industrial Commission, with fees. Unless the applicant is entitled to a renewal, he shall be licensed only after passing a satisfactory examination by the examiners showing fitness. Fees for journeymen shall be two dollars for examination and one dollar for renewal, and for contracting steamfitter \$15.00 for examination and \$10.00 for renewal. Licenses shall expire December 31st, but may be renewed upon application made the following January or February, but if in February only upon payment of an additional fee of one dollar for a journeyman and five dollars for a contracting steamfitter.

(b) The commission may issue temporary revocable permits pending examination, and to assist in this may appoint agents, without compensation, and may authorize one of its examiners or high pressure steam inspectors to hold a special permit examination, the results to be reported in writing.

(c) All persons who shall furnish within 90 days after the passage of this act satisfactory evidence to the commission that they were actually engaged in the business of a contracting steamfitter or journeyman steamfitter on January 1st, 1937, shall be entitled to receive a license as such contracting steamfitter or journeyman steamfitter, respectively, without examination, upon payment of the fees hereinbefore provided. (Apr. 23, 1937, c. 367, §8.)

**5887-30h. Commission may revoke licenses.**—The commission may revoke any license obtained through error or fraud, or if the licensee is shown to be incompetent, or for a second wilful violation of any of its rules and regulations applicable to such work. The licensee shall have notice in writing, enumerating the charges, and be entitled to a hearing by the commission on at least five days' notice, with the right to produce testimony. The commission may appoint, in writing, any competent person to take testimony, who shall have power to administer oaths, issue subpoenas and compel the attendance of witnesses. The decision of the commission shall be based on the testimony and records. One year from the date of revocation application may be made for a new license. (Apr. 23, 1937, c. 367, §9.)

**5887-30i. Violations a misdemeanor.**—Any person violating any of the provisions of this act or who shall wilfully make any false representation to the Industrial Commission in applying for a license or permit shall be guilty of a misdemeanor. (Apr. 23, 1937, c. 367, §10.)

**5887-30j. Fee to be paid to state treasurer.**—All fees received under this act shall be paid by the State Industrial Commission to the state treasurer, and an amount of money equal to the amount so paid over by said commission to said treasurer is hereby appropriated, out of any funds in the state treasury not otherwise appropriated, to said commission for the purpose of carrying out the provisions of this act. The salaries and per diem of the inspectors and examiners hereinbefore provided, their expenses and all incidental expenses of said commission in carrying out the provisions of this act shall be paid on order of the commission from such appropriation, but no expense or claim shall be incurred or paid in excess of the amount received from the fees herein provided. (Apr. 23, 1937, c. 367, §11.)

**5887-30k. Industrial Commission of Minnesota to supervise painting.**—(a) The Industrial Commission of Minnesota shall supervise painting, decorating, paperhanging, preparatory work incidental thereto, for the prevention of perpetration of fraud upon the public arising out of the failure to comply with specifications, substitution of inferior materials, refusal to pay for labor and materials, misrepresentation in the procuring of any contract for the furnishing of any painting or decorating, and incompetency

upon the part of persons engaged in the conduct of such business or occupation as a Contracting or Journeyman painter, and may prescribe minimum standards which shall be uniform.

(b) The Commission shall employ competent and experienced inspectors and other assistants to carry out this act. (Apr. 26, 1937, c. 428, §1.)

Contractors and journeymen painters working on a federal building under contract with federal government may not be required to register. Op. Atty. Gen. (636a-15), Nov. 15, 1937.

**5887-30l. Cities or villages may adopt rules and regulations—work on one's own premises—farmers—"permanent employee".**—Any city or village may by ordinance adopt the minimum rules and regulations of the Industrial Commission of Minnesota and prescribe rules and regulations in relation thereto, not however, inconsistent with any provision of this Act; provided however, that no such city or village shall prohibit painters registered by the Industrial Commission of Minnesota from engaging in or working at such business; and provided further, that this act shall not apply to any person in the performance, individually or by their permanent servants or other help of like character on the premises owned or occupied by them, of any of the services described herein as painting decorating, and paperhanging nor shall any such person performing such services, by his permanent employees, and not for hire, on or in buildings or structures owned, controlled or occupied by him, be deemed to be included within any provision of this act, and provided further that this act shall not apply to any person, engaged in the business of farming, in the performance, individually, or by such farmers' hired help, on any premises owned or occupied by him of any of the services described herein as painting, decorating and paperhanging. The term "Permanent Employee" shall mean and include any employee who is given regular and continuous employment for six months or more, except that as to farmers the term shall mean and include any person working as hired help for a definite or indefinite period. (Apr. 26, 1937, c. 428, §2.)

Employees of electric company who occasionally paint lamp posts are not required to have license. Op. Atty. Gen. (636a-7), July 14, 1937.

Employees to do painting for real estate firm having buildings under its control should be registered, even where period of employment is longer than six months. Op. Atty. Gen. (636a-15), July 15, 1937.

City may not adopt ordinance requiring painters registered under state act to pay additional license fee. Op. Atty. Gen. (636a-13), June 16, 1937.

While it is probable that a city is impliedly authorized to require apprentices to be registered with a local authority, it is doubtful if authority exists for city to require apprentices to be licensed. Op. Atty. Gen. (636a-19), Feb. 16, 1938.

Painters employed as such by railroad company to do painting on property owned by railroad should be registered. Op. Atty. Gen. (636a-15), June 21, 1938.

Cities of fourth class and villages may adopt minimum rules and regulations of Industrial Commission. Op. Atty. Gen. (636a-16), June 29, 1938.

**5887-30m. Local authorities to report to Industrial Commission.**—Such local authority as may be designated by any such ordinance shall report to the Industrial Commission of Minnesota persistent or willful violation of the same, and any incompetency of a registered painter observed by said local authority. (Apr. 26, 1937, c. 428, §3.)

Responsibility for inspection in cities of the first, second and third class is with the industrial commission, and not upon local authorities in such cities. Op. Atty. Gen. (636a-10(e)), May 4, 1937.

City ordinance should designate some local authority to make reports to industrial commission. Op. Atty. Gen. (636a-19), Feb. 16, 1938.

**5887-30n. Painters must be registered.**—(a) No person, firm or corporation shall engage in or work at the business or occupation of a painter unless registered to do so by the Industrial Commission of Minnesota. A Contracting painter may also work as a journeyman.

(b) No person, firm or corporation shall engage in the business of painting, decorating, paperhanging, preparatory work incidental thereto, unless at all times registered hereunder.

(c) The Industrial Commission of Minnesota shall prescribe rules and regulations not inconsistent herewith for the examination and registering of painters and shall require contracting painters to file a surety bond in a sum of \$250 to protect persons against fraud, incompetent painting and the good faith compliance of all contracts by said Contracting painter. (Apr. 26, 1937, c. 428, §4.)

Form of bonds prescribed by attorney general. Op. Atty. Gen. (636a-3), May 5, 1937.

A building contractor cannot take a general contract for building or remodeling which would include painting, and do the painting work himself or through an employee, unless he is registered as a contracting painter, but he may enter into a general contract and sublet painting to a painting contractor. Op. Atty. Gen. (636a-17(a)), June 22, 1937.

Act does not apply to sign painters. Op. Atty. Gen. (636a-15), Aug. 6, 1937.

Bond of painter in city of fourth class should run to city. Op. Atty. Gen. (636a-3), June 7, 1938.

Bond of contracting painter covers painting material. Op. Atty. Gen. (636a-3), Sept. 29, 1938.

Journeyman painters who take occasional contracts are required to have bonds. Op. Atty. Gen. (636a-3(a)), Nov. 7, 1938.

Board should not concern itself with question of whether a painting contractor's bond covers contract entered into for purchase of materials, remedy on bond being a matter for the court, and of no interest to the board until matter of revocation of registration becomes involved. Op. Atty. Gen. (636a-1), Sept. 14, 1939.

**5887-300. Who are contracting painters.—**(a) A Contracting painter is any person skilled in the work of painting, decorating and/or paperhanging, and in the mixing and tinting of paints and painting materials, planning, designing, superintending, and estimating.

(b) A Journeyman painter is any other than a Contracting painter or apprentice, who as his principal occupation is engaged in the practical work of painting, decorating and/or paperhanging, and in the mixing and tinting of paints and painting materials.

(c) A painter apprentice is any person other than a Contracting painter or Journeyman painter, not less than sixteen years of age who as his principal occupation is engaged in the learning and assisting in the practical work of painting, decorating and/or paperhanging.

(d) Nothing in this act shall be construed to prevent a Journeyman painter from taking an occasional painting contract. (Apr. 26, 1937, c. 428, §5.)

Sign painters, automobile painters, etc., are entitled to license as journeymen if they qualify under statutory definition. Op. Atty. Gen. (636a-13), July 12, 1937.

Act does not apply to sign painters. Op. Atty. Gen. (636a-15), Aug. 6, 1937.

**5887-30p. Commission to appoint examiners—compensation.—**The Industrial Commission of Minnesota shall appoint three examiners, of whom one shall be a practical Contracting painter, one a practical Journeyman painter, and one a representative of the Commission, to be known as the "Painting Examiners". Such Contracting painter and such Journeyman painter shall each receive his expenses, and such per diem for each day actually engaged in duties connected with the carrying out of the provisions of this act as the Commission shall fix by its order, not exceeding Ten (\$10) Dollars per day. (Apr. 26, 1937, c. 428, §6.)

**5887-30q. Applications—fees.—**(a) Application for painter's registration shall be made to the Industrial Commission of Minnesota, with fees. Unless the applicant is entitled to a renewal, he shall be registered by the Industrial Commission only after passing a satisfactory examination by the examiners showing fitness. Fees for Contracting painters shall be \$20.00 for examination and \$15.00 for renewal; and for the Journeyman painters, three dollars for examination and two dollars for renewal. Registrations shall expire December 31st, and may be renewed

upon application made the following January and thereafter only upon payment of an additional fee of five dollars for a Contracting painter and one dollar for a Journeyman painter. All fees over and above expenses of examination, supervision and inspection shall go to the General Revenue Fund.

(b) The salaries of the necessary employees of the Commission, and the per diem of the inspectors and examiners hereinbefore provided, their expenses, and all incidental expenses of said Commission in carrying out the provisions of this act shall be paid by the Commission only from fees.

(c) The Commission may issue revocable permits pending examination, and to assist in this, may authorize and appoint without compensation one of its examiners to hold a special permit examination, the results to be reported in writing.

(d) All persons who shall furnish within 60 days after passage of this act, satisfactory evidence to the Commission that they are engaged in the business of a Contracting painter or Journeyman painter in this state shall be entitled to receive a registration as such Contracting painter or Journeyman painter, respectively, after payment of the fees hereinbefore provided. (Apr. 26, 1937, c. 428, §7.)

(a). Section does not require that at the close of each fiscal year balances remaining from fees collected shall be turned into the general revenue fund, but commission may retain sufficient fees to carry out provisions of act. Op. Atty. Gen. (636a-10(e)), May 4, 1937.

**5887-30r. May revoke registration—appeals—new registration.—**The Commission may revoke any registration obtained through error or fraud, or if the registered has perpetrated fraud or breach of contract, including failure to comply with specifications, substitution of inferior materials, refusal to pay for labor and materials, misrepresentation in the procuring of any contract for the furnishing of painting or decorating, gross incompetency, and for willful violation or any of its rules or regulations or local ordinances applicable to such work. The registered shall have notice in writing enumerating the charges preferred, and shall be entitled to a hearing by the Commission upon at least five days' notice and the right to produce testimony in defense thereof. Applicant may appeal from any decision of said Commission to the District Court. The Commission may appoint, in writing, any competent person to take testimony, who shall have power to administer oaths, issue subpoenas, and compel the attendance of witnesses. The decision of the Commission shall be based upon the testimony and records. Application may be made for a new registration after revocation. (Apr. 26, 1937, c. 428, §8.)

Board should not revoke registration of a contracting painter for failure to pay for labor or materials until judgment has been rendered by a court against contractor. Op. Atty. Gen. (636a-1), Sept. 14, 1939.

**5887-30s. Violation a misdemeanor.—**Any person violating any of the provisions of this act, or who shall willfully make any false representation to the Commission in applying for registration of Permit, shall be guilty of a misdemeanor. (Apr. 26, 1937, c. 428, §9.)

**5887-30t. Application of act.—**Provided, however, that the provisions of this act shall apply only to cities of the first, second and third class. (Apr. 26, 1937, c. 428, §10.)

Sec. 11 of Act Apr. 26, 1937, cited, provides that the Act shall take effect from its passage.

Cities of fourth class and villages may adopt minimum rules and regulations of Industrial Commission. Op. Atty. Gen. (636a-16), June 29, 1938.

**EVERGREEN OR CONIFEROUS TREES**

**5887-31. Shipping of evergreens prohibited—exceptions.—**(a) Except as otherwise authorized by this act, no person shall remove, ship, transport, offer for sale, sell, purchase for re-sale, or have in possession for transportation or sale, and no common car-

rier shall transport or receive or have in possession for transportation any green pine, cedar, spruce, balsam, fir, hemlock, or other evergreen or coniferous tree intended for use as a Christmas tree, for decorations, or for other purposes unless the same has attached thereto an official tag issued by the director of the division of forestry, department of conservation, as provided by this act; provided, that the provisions of this act shall not apply to nursery stock nor to trees cut or used by the state or Federal government for any lawful public purpose; and provided, further, that any person may cut within the state or import from without the state and may transport and possess within the state for his or its own use not to exceed three such trees in a single lot in one year without having the same tagged as herein provided. Provided further, that permits may be issued to dealers in such trees as provided in paragraph (b) of this section, in which case the provisions hereof, except those contained in said paragraph (b), shall not apply to such permittees or trees handled by them.

(b) Any person engaged in the business of cutting, processing, shipping or selling evergreen or other coniferous trees intended for use as Christmas trees, for decorations, or for other purposes may apply to the director of the division of forestry of the department of conservation for a permit as dealer in such trees, which permit shall expire on December 31st of the year in which issued. At the time of applying for such permit the applicant shall give such information as to the proposed manner of conducting the business and the number, kind and character of trees intended to be dealt in as may be required by the director. With such application the applicant shall submit a fee of \$200.00 payable to the state treasurer. In addition to the permit fee required hereby, such permittee shall be required to purchase tags and/or labels or stickers, and affix the same to all trees or shipments sold, or transported by them, except trees shipped out of the state of Minnesota. Under this section, the time and method of the attachment, use, and the kind of tag, label or sticker, are to be prescribed by the director of forestry. Such permittee shall pay a fee at the rate of two cents for each tree required to be tagged under this section. The term "processed," as used herein, shall mean the treatment of any tree by a chemical bath, either through dipping or spraying, for the purpose of fixing, intensifying or changing the color thereof and/or to prevent the falling off of needles therefrom. Each permittee shall display on all vehicles used in the transportation of trees handled by him, from the place of cutting to the place where such trees are processed, a copy of his permit as a permittee; he shall affix to each tree, crate or carton, for which a fee is required hereunder, such tag, label or sticker before such tree is sold, shipped, or transported by him. (Act Apr. 29, 1935, c. 331, §1; Apr. 26, 1937, c. 470, §2.)

Act Apr. 26, 1937, c. 470, §1, amends the title of Laws 1935, c. 331, to read as follows:

"An act to amend Laws 1935, c. 331, being an act relating to the conservation of evergreen and coniferous trees, providing for the supervision and control of the traffic in such trees intended for use as Christmas trees or for other purposes and for the issuance of permits to dealers in such evergreen and coniferous trees, and for the use thereon of tags, labels or stickers issued by the director of the division of forestry, department of conservation, and providing fees therefor; so as to include decorations and relating to permit fees and tags, labels or stickers and the seizure of trees under this act."

List of interpretations provided for department of conservation. Op. Atty. Gen. (203w), June 27, 1935.

Act must be administered until it has been declared unconstitutional. Op. Atty. Gen., July 27, 1935.

**5887-32. What are trees.**—All tops cut from trees of the kinds aforesaid and all bushes, shrubs, saplings, and seedlings of such kinds, when wholly or partly untrimmed, shall be deemed to be trees within the meaning of the provisions of this act, but slashings or side branches cut from such trees shall not be so regarded. The fact that any such tree has been

removed in a wholly or partly untrimmed condition from the immediate premises where cut shall be prima facie evidence that it is intended for transportation or sale and for use as a Christmas tree for decorations, or for other purposes, and the burden of proving the contrary shall be upon the defendant or other party so asserting in any criminal or civil action involving the provisions of this act. (Act Apr. 29, 1935, c. 331, §2; Apr. 26, 1937, c. 470, §3.)

**5887-33. Tags.**—Every such tag shall have printed thereon the words, "State of Minnesota, Director of the Division of Forestry, Department of Conservation, Evergreen Tree Tag," together with the year of its issue in prominent figures, and shall have space for the name and address of the person attaching the same, and may otherwise be in such form and may have printed thereon such appropriate statements or devices as the director may prescribe, subject to the provisions of this act. (Act Apr. 29, 1935, c. 331, §3.)

**5887-34. Issuance of tags.**—Such tags shall be issued by the director of the division of forestry, department of conservation, or by any officer or agent authorized by him, to any person required or entitled to obtain and use the same as herein provided, upon written application made by such person or by his authorized agent as hereinafter provided, and upon payment of a fee of two cents per tag. Such application shall be in such form as the director may prescribe, subject to the provisions hereof. It shall state the name and address of the applicant and the number and kind of trees to be tagged, and shall state generally how and where the same are to be disposed of. In the case of trees cut or to be cut within the state, the application shall set forth a description of the premises whereon the trees are located and the name of the owner thereof. In the case of trees cut without the state, the application shall state the place from which the trees were shipped or transported into this state and the name and address of the person from whom obtained. The application shall give such other pertinent information as the director may require. The applicant shall submit with the application proof that he is the lawful owner of the trees therein referred to and has lawfully authority to dispose of the same as proposed and that all the provisions of the laws of this state relating thereto have been complied with, and, in the case of imported trees, that all the provisions of the laws of the state or country wherefrom the same were obtained relating thereto have been complied with. The director or authorized officer or agent receiving the application may make such further investigation as he deems necessary for the purpose of verifying the statements of the application and determining the sufficiency of the proof submitted therewith. The applicant may be required to verify upon oath the statements of the application or accompanying proof, or any part thereof. If the director or authorized officer or agent receiving the application is satisfied that the facts therein stated are true and that the proof submitted therewith is sufficient and that the applicant is entitled to receive the tags applied for under the provisions of this act, he shall issue to the applicant the tags applied for, upon payment of the fee hereinbefore prescribed. (Act Apr. 29, 1935, c. 331, §4; Apr. 26, 1937, c. 470, §4.)

**5887-35. Owner to affix tags.**—(a) Before any such tree cut within the state is removed from the premises where cut, whether intended for transportation, sale, or use within or without the state, it shall be the duty of the owner of such tree to affix or cause to be affixed one of such tags thereto, and to have his name and address plainly written, printed or stamped upon such tag.

(b) Before any such tree imported from without the state is shipped or transported within the state after arrival at its initial destination whereto it was imported or is separated from the original lot shipment or consignment in which it was imported, or is offer-

ed for sale, or is used, the owner shall affix or cause to be affixed one of such tags thereto; provided, that by written permission of the director or of any officer or agent authorized to issue tags hereunder, any unbroken lot, shipment, or consignment of imported trees may be reshipped or transported from its initial destination to any other point within the state without tags, which permission shall be granted without charge upon like application and showing as herein provided for the issuance of tags, but such permission shall not relieve the owner from the obligation to tag such trees as herein provided after the termination of such reshipment or transportation.

(c) Each tag shall be affixed as herein provided by securely fastening the same to the trunk or stem of the tree with wire at a point above the lowest branch or branches, unless some other method shall be prescribed by the director of forestry by instructions printed upon the tag, in which case the method so prescribed shall be followed.

(d) No person shall remove any such tag from any tree until such tree has actually been placed in use by the ultimate purchaser or user thereof, or until it is no longer required or available for such use, or, in the case of a tree shipped or transported out of the state, until it has left the state.

(e) All trees which do not conform with the provisions of this act are declared to be contraband and subject to seizure and confiscation as hereinafter provided. (Apr. 29, 1935, c. 331, §5; Apr. 26, 1937, c. 470, §5.)

What constitutes interstate commerce is question of fact. Op. Atty. Gen. (27a), Nov. 22, 1935.

**5887-36. Powers and duties of directors, forest rangers, etc.**—In addition to other powers and duties herein prescribed, the director, and any forest ranger, forest patrolman, game warden, or other officer of the department of conservation, and any peace officer shall have the following powers and duties hereunder:

(a) To arrest, with or without a warrant, any person who is discovered to have committed any offense under this act or who is believed upon reasonable grounds to have committed any such offense;

(b) To inspect any such trees, wherever found, and to make such investigation with reference thereto as may be necessary for the purpose of determining whether the provisions of this act or of any other law relating to such trees have been complied with;

(c) To enter with or without a warrant for the purpose aforesaid any premises whereon such trees are kept or have been cut or wherein such trees are kept for transportation or sale, including the premises, cars, or other transportation facilities of common carriers, and to stop any vehicle or other means of conveyance found carrying any such trees upon any public highway of this state, and to seize and confiscate in the name of the state any evergreen or coniferous tree or trees taken or had in possession or under control, or sold or transported in violation of this chapter, and to seize, confiscate and dispose of all trees unlawfully used or had in possession in violation of this chapter as the director of forestry may prescribe. All confiscated trees may be retained by the director of forestry or sold at the highest price obtainable by the director of forestry or forest officers or by an agent of the director of forestry, under written authority and supervision of the director of forestry. The net proceeds of such sales, after deducting the expense of seizure and sale and any such commissions, shall be promptly remitted by the forest officer by whom and under whose authority and supervision the sales were made, to the director of forestry and by him paid into the state treasury; the remittances to be accompanied by the complete and certified report of such sales supported by such vouchers covering all deduction made for expenses and commissions, to be filed for record in the office of the division of forestry. All net proceeds from such sales are hereby appropriated as under Section 10 of this act.

Confiscation of coniferous trees under this act may include two or more trees when packed, bundled, fastened together, or contained in the same bag, crate, box, or other receptacle or otherwise commingled and when one or more thereof are contraband, then and in such case the whole bundle or parcel thereof shall be deemed contraband, although a part of the trees in such bundle or parcel may have tags affixed thereto. (Apr. 29, 1935, c. 331, §6; Apr. 26, 1937, c. 470, §6.)

Sec. 6 of Act Apr. 26, 1937, cited, amends only paragraph (c) of this section.

**5887-37. May issue search warrants.**—Any court or magistrate having authority to issue warrants in criminal cases may issue a search warrant in like manner as provided by law for search warrants for stolen property to search for and seize any trees alleged upon sufficient grounds to have been affected by or involved in any offense under this act. Such warrant may be directed to and may be executed by any officer herein authorized to make arrests and seizures. (Act Apr. 29, 1935, c. 331, §7.)

**5887-38. Officers may make complaints.**—Any officer discovering or having knowledge of offense under this act shall forthwith make complaint against the offender before a court or magistrate having jurisdiction to issue warrants of arrest in such cases, and shall submit to the jurisdiction of such court or magistrate or of such other court or magistrate as may take cognizance of the case any trees affected by or involved in the offense and seized as herein provided. (Apr. 29, 1935, c. 331, §8; Apr. 26, 1937, c. 470, §7.)

**5887-39. Records.**—Records shall be kept by the director and by every officer and agent authorized by him to issue tags under this act, by showing the dates of issuance of all such tags, the persons to whom issued, the number issued, the amount of fees received, and such other pertinent information as the director may prescribe. The director may require such reports from such officers and agents as he deems necessary. Such records and reports shall be filed in the office of the director. (Act Apr. 29, 1935, c. 331, §9.)

**5887-40. Fees to be paid into State Treasury.**—All fees received from the issuance of such tags, labels or stickers and the sale of permits shall be promptly transmitted through the director to the state treasurer. All such fees are hereby appropriated to the director for salaries and other expenses incurred in connection with the enforcement of this act, subject to the provisions of Laws 1925, Chapter 426 [§§53-1 to 53-52], and acts amendatory thereof. (Act Apr. 29, 1935, c. 331, §10; Apr. 26, 1937, c. 470, §8.)

**5887-41. False statements a gross misdemeanor.**—(a) Any person who shall make any false statement in any application or other statement for the purpose of obtaining any such tag shall be guilty of a gross misdemeanor.

(b) Any person who shall affix any such tag to any such tree other than a tree covered by the application upon which the tag was issued, or who shall remove, ship, transport, offer for sale, sell, purchase for re-sale, or have in possession for transportation or sale any such tree bearing any such tag other than a tag issued upon an application covering such tree, knowing that such tag was not issued upon such an application, shall be guilty of a gross misdemeanor.

(c) Any person who shall without lawful authority place upon any such tag any name being or purporting to be the name of a person authorized to receive and affix such tag as herein provided, or who shall place upon any such tag any false, forged, or fictitious name purporting to be the name of a person authorized to receive and affix such tag as herein provided, shall be guilty of a gross misdemeanor.

(d) Any person who, with intent that the same shall be affixed to any tree required to be tagged as herein provided, shall forge or counterfeit any tag

issued hereunder, or make any tag substantially simulating in whole or in part any tag issued hereunder, and any person who shall affix to any such tree any such forged, counterfeit, or simulated tag, knowing such tag to be forged, counterfeit, or simulated, or who shall remove, ship, transport, offer for sale, sell, purchase for re-sale, or have in possession for transportation or sale any such tree bearing any such forged, counterfeit, or simulated tag, knowing such tag to be forged, counterfeit, or simulated, shall be guilty of a gross misdemeanor.

(e) Except as otherwise herein provided, any person who shall violate any provision of this act or who shall fail to perform any duty required by this act shall be guilty of a misdemeanor. (Act Apr. 29, 1935, c. 331, §11.)

**5887-42. Definitions.**—The term "person" as used herein shall include a co-partnership, corporation, or association, wherever appropriate. (Act Apr. 29, 1935, c. 331, §12.)

**5887-43. Inconsistent act superseded and modified.**—All acts and parts of acts inconsistent herewith are hereby superseded, modified, or amended so far as may be necessary to give full force and effect to the provisions of this act. Otherwise this act shall not be deemed to supersede any existing provision of law relating to any matter within the scope of this act, but shall be construed as supplementary to any such existing provision. Any offense which is punishable both under this act and under some other provision of law may be prosecuted and punished under either, at the election of the prosecuting attorney, but not under both. (Act Apr. 29, 1935, c. 331, §13.)

**5887-44. Provisions separable.**—The provisions of this act shall be separable, and if any provision hereof shall be declared invalid, it shall not affect any other provision. (Act Apr. 29, 1935, c. 331, §14.)

#### LIQUIDATION OF DEBTS

**5887-51. Who are subject to act.**—Any person, co-partnership, association or corporation who shall engage in or hold themselves out as engaging in the business of compromising, settling, adjusting, prorating or liquidating the indebtedness of a debtor, except as is hereinafter expressly exempted, shall be subject to the provisions of this act. (Act Apr. 29, 1935, c. 347, §1.)

A corporation authorized to operate as a credit clearing agency and also to engage in business of liquidating debts of a debtor is subject to provision of this act. Op. Atty. Gen. (385a-2), June 2, 1935.

**5887-52. Application to be filed with Secretary of State.**—Any person, co-partnership, association or corporation desiring to engage in such business shall file with the secretary of state, an application to engage in such business, in such form as the secretary of state may provide. Upon the filing of any such application, the secretary of state shall refer a copy of said application to the county attorney in which county such person, co-partnership, association or corporation proposes to establish its business and said county attorney shall forthwith inquire into the fitness of such person to conduct such business, having in mind the character of the applicant, or in case of a co-partnership, association or corporation, of the character and fitness of co-partners, officers and directors, together with their ability and fitness to conduct said business in the interest of the debtor, and report such findings with his recommendation to the secretary of state. (Act Apr. 29, 1935, c. 347, §2.)

Branch offices are not authorized, and license should be granted for one county and business be permitted to be done anywhere in state from that county. Op. Atty. Gen. (290v), Dec. 15, 1937.

**5887-53. Bond.**—Before the secretary of state shall issue any permit or authorization to any such person, co-partnership, association or corporation to engage in such business, the applicant shall file with the secretary of state a surety bond to be approved by him in which the applicant shall be the obligor in

the sum of \$5,000.00, with one or more sureties whose liability as such surety need not exceed said sum in the aggregate. Said bond shall run to the state of Minnesota for the use of the state or any person or persons who may have cause of action against the obligor of said bond, under the provisions of this act. Such bond shall be conditioned that such obligor will faithfully conform to and abide by the provisions of this act and will pay to the state and to any such person or persons, any and all monies that may be due or owing to the state or to such person or persons from said obligor under and by virtue of the provisions of this act.

If the secretary of state shall find at any time that the bond is insecure or exhausted, or otherwise doubtful, an additional bond, to be approved by him, with one or more sureties, and of the character specified herein, in the sum of not more than \$5,000.00, shall be filed by the obligor within 10 days after written demand upon the obligor by the secretary of state. (Act Apr. 29, 1935, c. 347, §3.)

**5887-54. Secretary of State may examine records.**—Upon written complaint of any person feeling aggrieved and for the purpose of recovering violations of this act or securing information lawfully required by him hereunder, the secretary of state may at any time, either personally or by a person or persons duly designated by him; examine the bonds, accounts, records and files used therein, as to the accounts of the complaining party, of every obligor and of every person, co-partnership, association and/or corporation which shall be engaged in such business, whether such person, co-partnership, association or corporation shall act or claim to act as principal or agent under or without the authority of this act. Or, the secretary of state may forward such complaint to the county attorney of the county in which such business is situated and the county attorney of such county shall forthwith examine into such matters as heretofore enumerated and make report thereof to the secretary of state. The secretary of state and such county attorney, with all persons duly designated by them, shall have the authority to require the attendance of, and to examine under oath all persons whose testimony he may require, relative to such business.

It shall be the duty of the county attorney, either before or after making such report to the secretary of state, to prosecute any such person, co-partnership, association or corporation found by him upon such examination, or otherwise, to have violated the provisions of this act, or any other law of the state of Minnesota. (Act Apr. 29, 1935, c. 347, §4.)

**5887-55. Shall keep accounts.**—The obligor shall keep and use in his business such books, accounts and records as will enable the secretary of state and/or county attorney in such county, to determine whether such obligor is complying with the provisions of this act. Every obligor shall preserve such books, accounts and records, including cards used in the card system, if any, for at least two years after making the final entry on any contract recorded therein. (Act Apr. 29, 1935, c. 347, §5.)

**5887-56. Shall make statement of account.**—Every obligor shall;

Deliver to any debtor at the time the contract is made, a statement in the English language showing in clear and distinct terms, the amount of the indebtedness claimed by the debtor to be owing to his creditors, the date of the contract and its maturity, the nature of the security, if any, for the contract, the name and address of the debtor and of the obligor and of the agreed total charges for the service rendered or to be rendered.

Within 35 days after the payment of any monies by the debtor to the obligor, the obligor shall pay to the creditors of the debtor their proportionate share due in accordance with the terms of the contract.

Give to the debtor a plain and complete receipt for all payments made on account of such contract at the time such payments are made.

Upon payment of the contract in full, mark indelibly every obligation and security signed by the debtor with the word "Paid" or "Cancelled," and release any mortgage, restore any pledge, cancel and return any note, and cancel and return any assignment given to the obligor by the debtor. (Act Apr. 29, 1935, c. 347, §6.)

**5887-57. Certain acts a misdemeanor.**—Any person, co-partnership, association or corporation and the several members, officers, directors, agents and employees thereof who shall violate or participate in the violation of any of the provisions of this act shall be guilty of a misdemeanor.

Any contract not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a misdemeanor under this act, shall be void and the obligor and/or his assigns shall have no right to collect or receive any principal, interest or charges whatsoever. (Act Apr. 29, 1935, c. 347, §7.)

**5887-58. Application of act.**—This act shall not apply to any attorney-at-law duly authorized to practice in this state and resident herein, nor to any person, co-partnership, association or corporation doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, building and loan associations or credit unions, and nothing in this act contained shall permit or be construed as authorizing any person, not otherwise duly admitted to practice law in this state, to engage in the practice of law. (Act Apr. 29, 1935, c. 347, §8.)

**5887-59. Provisions severable.**—If any clause, sentence, section, provision or part of this act shall be adjudged to be unconstitutional or invalid for any reason by any court of competent jurisdiction, such judgment shall not impair, affect or invalidate the remainder of this act, which shall remain in full force and effect thereafter. (Act Apr. 29, 1935, c. 347, §9.)

#### POULTRY FLOCK INSPECTORS

**5887-61. Poultry flock inspectors.**—For the purpose of this act, any persons who, for compensation or without compensation, shall cull poultry flocks, other than those belonging to himself, for production or for standard of perfection or merit; and any person who shall, for compensation or without compensation, engage in or purport to be engaged in the culling of poultry, or holds himself out as a culler of poultry and who, at the same time, is engaged in the purchasing of or bartering for poultry either for himself or as the agent of another, shall be deemed to be a poultry flock inspector. (Act Apr. 20, 1935, c. 226, §1; Jan. 24, 1936, Ex. Ses., c. 91, §1.)

Applicant for license must qualify for both culling for production and for standard of perfection or merit, and there can be only one class of license. Op. Atty. Gen. (293b-61), July 2, 1937.

Poultry improvement board cannot inspect flocks in other states. Op. Atty. Gen. (293b-16), Aug. 23, 1937.

**5887-62. Must be licensed.**—No person shall act or hold himself out as a poultry flock inspector, as defined and limited in this act unless he shall be licensed to act as such by the Minnesota poultry improvement board. (Act Apr. 20, 1935, c. 226, §2; Jan. 24, 1936, Ex. Ses., c. 91, §1.)

A chick hatchery which does not buy poultry but only buys hatchery eggs need not have a license to cull chick-

ens for customers without charge. Op. Atty. Gen. (290), Aug. 26, 1935.

Board may issue a license to a poultry breeder in just one breed. Id.

Persons culling poultry flocks exclusive of their own must have license though no charge is made. Op. Atty. Gen. (293h-16), Nov. 13, 1936.

**5887-63. Qualifications.**—Licenses to act as a poultry flock inspector shall be issued by the Minnesota poultry improvement board to such reputable persons as shall apply therefor, pay the prescribed fee and comply with the conditions herein specified to-wit:

- (a) 21 years or more of age;
- (b) A citizen of the United States;
- (c) Of good moral character;
- (d) Shall have passed an examination given by said board;
- (e) Shall have paid a fee of five dollars. (Act Apr. 20, 1935, c. 226, §3.)

**5887-64. Applications—Licenses—Fees.**—Any person desiring a license as a poultry flock inspector shall file his application to take an examination therefor, together with his license fee of five dollars, with the said board, on such application form as the board shall prescribe. (Act Apr. 20, 1935, c. 226, §4.)

**5887-65. Examinations.**—The board shall conduct examinations for poultry flock inspectors at least twice a year and at such other times as it deems necessary and advisable. Such examinations shall be in such form as the board shall determine. (Act Apr. 20, 1935, c. 226, §5.)

**5887-66. May revoke licenses.**—The board shall have the authority to revoke a license after hearing and for cause and upon ten days' written notice of hearing served either personally or by registered mail upon the licensee. (Act Apr. 20, 1935, c. 226, §6.)

**5887-67. Renewals.**—Every such license shall be renewed on or before December 31st of each year and such renewal shall cost five dollars. If such license is not renewed on or before such date a penalty of two dollars shall attach and if not renewed within three months from such date, the holder of such license may be compelled by the board to take another examination before his license is renewed. (Act Apr. 20, 1935, c. 226, §7.)

**5887-68. Fees to general revenue fund.**—The fees herein provided for shall be deposited in the general revenue fund. (Act Apr. 20, 1935, c. 226, §8.)

**5887-69. Board to make rules.**—The board shall have the authority to make reasonable rules and regulations to enforce the provisions of this act. (Act Apr. 20, 1935, c. 226, §9.)

**5887-70. Violations a misdemeanor.**—Anyone acting as a poultry flock inspector within the meaning of this act without a license therefor, shall be guilty of a misdemeanor and it shall be the duty of the county attorney of each county to prosecute all violations of this act within his county. (Act Apr. 20, 1935, c. 226, §10.)

**5887-71. Application of act.**—The provisions of this act shall not apply to anyone culling his own poultry flocks, or to approved poultry extension specialists or county agricultural agents or home demonstration agents. (Act Apr. 20, 1935, c. 226, §11.)

## CHAPTER 35A Collection Agencies

**5888. To file bond with secretary of state—Conducting agency, etc.**

A justice of the peace cannot act as collection agent without license. Op. Atty. Gen. (266a-3), Oct. 4, 1934.

Statute does not apply to persons, partnerships, associations, or corporations engaged in care and management of real property, who as an incident to their duty,

collect rentals for their clients. Op. Atty. Gen. (736c), Feb. 15, 1938.

Collection agency cannot avoid necessity for filing of bond by taking assignment of claims. Op. Atty. Gen. (828b), July 5, 1938.

Justice of the peace engaged in business of collection of bills must file bond, and obtain license. Op. Atty. Gen. (266a-3), Aug. 10, 1938.