1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 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 Law Review Articles and digest of all common law decisions.

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(7) A statement providing for a period of probation of not more than 500 hours of employment and instruction extending over not more than four months, during which time the apprentice agreement shall be terminated by the director at the request in writing of either party, and providing that after such probationary period the apprentice agreement may be terminated by the director by mutual agreement of all parties thereto, or canceled by the director for good and sufficient reason.

(8) A provision that all controversies or differences concerning the apprentice agreement which cannot be adjusted locally shall be submitted to the director for determination as provided for in section nine.

(9) A provision that an employer who is unable to fulfill his obligation under the apprentice agreement may, with the approval of the director, transfer such contract to any other employer provided that the apprentice consents and that such other employer agrees to assume the obligations of said apprentice agreement.

(10) Such additional terms and conditions as may be prescribed or approved by the director not inconsistent with the provisions of this act. (As amended Mar. 28, 1941, c. 85, §1.)

COMMON LAW DECISIONS RELATING TO TRADE UNIONS IN GENERAL

2. Remedies of members.

An appeal under a parent union's laws by a local union from a decision of the parent union's general president to its general executive board will not be held futile and illusory in advance of the event, where provision is made for a full hearing on such appeal, but where the general executive board by its conduct renders such an appeal nugatory, the parent union will be held to have waived compliance with the provisions of its laws requiring that redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to the courts. Mixed Local Etc. v. Hotel and R. Employees Etc., 212M587, 4NW(2d)771. See Dun. Dig. 9674.

Where a provision of a parent union authorizing its general president to appoint a trustee of a local union subject to its jurisdiction and discipline is silent with respect thereto, preferment of charges, notice, and hearing are implied as requirements of due process. Id.

An appeal to a parent union's general executive board from an order of its general president appointing a trustee of a local union, absent expression of a contrary meaning, removes the matter to the general executive board for trial de novo. Id.

Redress of grievances must be sought by exhaustion of intra-union remedies before there can be recourse to the court arising out of a controversy between a parent union and a local union. Id.

Where a voluntary association such as a lodge or trade union proceeds without complying with its laws, its action is a nullity for want of jurisdiction, and redress may be had by direct resort to the courts without exhaustion of remedies within the organization. Id.

Where the method of procedure in controversy is not regulated by law of an association or trade union, procedure should be analogous to ordinary parliamentary proceedings. Id.

Where a parent union expels or suspends a subordinate one without charges, notice, or hearing, the expulsion or suspension is a nullity. Id.

3. Public employees.

Resolution of county board prohibiting hiring of members of labor unions would be unconstitutional. Op. Atty. Gen. (270d), Nov. 9, 1943.

4. Picketing.

In the exercise of freedom of speech secured by the Fourteenth Amendment of the Constitution of the United States, a labor union may peacefully picket the premises, where a person is engaged in building a house for the purpose of sale, to induce him to let work in connection with the construction thereof, done by him with his own hands, to others, who would employ union labor to do the same. Glover v. Minneapolis Building Trades Council, 215M533, 10NW(2d)481, 147ALR1071. See Dun. Dig. 1701, 9674.

Picketing—freedom of speech—false bannering in connection with peaceful picketing. 27MinnLawRev187.

5. Constitution, and contracts.

Barbers' union providing sick and death benefits to members waived a compliance with provision of constitution concerning form and time for filing claims for death benefit by repudiating claim and delaying for an unreasonable length of time to furnish claimant information as to status of decedent's dues. Wait v. Journeymen Barbers' International Union, 210M180, 297 NW630. See Dun. Dig. 4844.

Constitution of barbers' union providing for maximum benefits to a contributing member for more than 15 years held not to require that member be a continuous contributing member for that number of years immediately prior to death, and it was immaterial that membership of deceased had been suspended for a period several years prior to his death. Id. See Dun. Dig. 4846.

Constitution of barbers' union must be construed most favorably to member as respects amount of death benefit payable to his widow. Id.

Under the constitution of the International Union of teamsters, chauffeurs, warehousemen and helpers, a local union could not be dissolved so long as seven members of it objected to such dissolution, being a matter of contract between the local and union to which the local assented when it accepted its charter. State v. Postal, 215M427, 10NW(2d)373. See Dun. Dig. 9674.

6. Property.

The property of unincorporated labor unions is just as sacred as that of any other organization or person, and the officers of those unions, like officers of other organizations, are bound to respect the title to that property. State v. Postal, 215M427, 10NW(2d)373. See Dun. Dig. 9674.

CHAPTER 23A

Workmen's Compensation Act

PART I

COMPENSATION BY ACTION AT LAW— MODIFICATION OF REMEDIES

4261. Injury or death of employee. [Repealed.]

Repealed. Laws 1937, c. 64, §10.

Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514. Reh. den., 60SCR607.

PART II

ELECTIVE COMPENSATION

4268. Not applicable to certain employments. [Repealed.]

3. Casual employment.

See notes under §4272-4.

Removing screens and putting on storm windows on two 3-story buildings was casual employment, but employer and employee were within the Act if the employment was in the usual course of business or occupation of employer. Fisher v. M., 208M410, 294NW477. See Dun. Dig. 10394.

4271. Presumption as to acceptance of provisions of part 2. [Repealed.]

Evidence sustains finding that employer neglected to post and keep posted in a conspicuous place in his place of business, notice of election not to be bound by Part II of compensation act, and his election was inoperative. Walerius v. F., 206M521, 289NW55. See Dun. Dig. 10389.

4272-1. Employer's right to elect abolished.

Rights and obligations created by compensation act are contractual, and rights granted and obligations imposed necessarily rest upon statute and are limited as granted or imposed by it. McGough v. M., 206M1, 287NW 857. See Dun. Dig. 10385.

A basic thought underlying compensation act is that business or industry shall in the first instance pay for accidental injury as a business expense or a part of cost of production. Id.

Compensation act should receive a broad and liberal construction in the interest of workmen, and court should studiously avoid a narrow or forced construction of third party statute. Id.

Employer's liability has for its foundation the existence of employer-employee relation. Id. See Dun. Dig. 10393.

Workmen's Compensation Act should be liberally construed in favor of employee. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 10385.

Assault on and death of a traveling salesman after leaving plant arose "out of" his employment where plant was located in a district where crime was prevalent and night work there tended to subject him to

foul play. Hanson v. Robitshek-Schneider Co., 209M596, 297NW19. See Dun. Dig. 10402.

Maintenance of a resident employee to further business interests in state sufficiently localizes an employer's business to make applicable state Workmen's Compensation Act. Rice v. Keystone View Co., 210M227, 297NW841. See Dun. Dig. 10388.

Continued negotiations resulting in sending to salesmen in this state a contract assigning to him territory in North Dakota, South Dakota, and Iowa, and a new contract assigning several counties in Minnesota and other out-of-state territory, accepted in Minnesota, was a Minnesota contract of employment. Id.

Liability under Workmen's Compensation Act arises by virtue of a contractual relationship between employer and employee and is not dependent upon negligent conduct on part of employer. Gleason v. Sing, 210 M253, 297NW720. See Dun. Dig. 10385.

Compensation act is a remedial statute and must be liberally construed to effectuate its purpose. Kellerman v. City of St. Paul, 211M351, 1NW(2d)378. See Dun. Dig. 10385.

Act should receive a broad and liberal construction in interest of employees. Kvernstoen v. Nelson, 212M102, 2 NW(2d)560. See Dun. Dig. 10385.

Phrase "caused by accident arising out of and in the course of employment" in Mason's St., §4272-1, should be construed in connection with §4326(j), providing that act shall not include injury caused by act of third person or fellow employee intended to injure employee because of reasons personal to him and not directed against him as an employee. Brown v. General Drivers Union, 212M265, 3NW(2d)423. See Dun. Dig. 10403.

Burden is on one seeking recovery to prove that injury or death of employee was caused by accident arising out of and in course of employment. Id.

Employment as president and organizer of a truck drivers union was an extrahazardous occupation during a time of strikes and strife, but that does not establish that death of employee from a bullet wound arose out of and in course of employment. Id. See Dun. Dig. 10402.

Workmen's Compensation Law is remedial and is to be construed liberally in the advancement of the remedy. Annala v. Bergman, 213M173, 6NW(2d)37. See Dun. Dig. 10385.

Spirit and purpose of Act is protection of employee. Id.

Travel to and from work by an employee may be an incident of the employment where contract of employment provides, expressly or by necessary implication, that the employment shall begin when the employee leaves his home to go to work and shall end when he returns to it. Cavilla v. Northern States Power Co., 213M331, 6NW(2d)812. See Dun. Dig. 10403.

Proviso was added to provide coverage where the employer "regularly" furnishes transportation to his employees to and from the place of employment, and there is no coverage while employee is engaged on a week-end trip to his home after completion of his week's work without transportation being provided by employer, though employer provided transportation to job when it commenced and was bound to provide transportation back when the job was completed. Id. See Dun. Dig. 10405.

Fact that employer made an additional daily allowance to employees on a job away from home, including Saturday and Sunday, did not entitle an employee to compensation for injuries received while traveling to and from home on week-end. Id. See Dun. Dig. 10405.

Week-end trips were not made an incident of the employment by custom because employer knew that employees took such trips home and consented to an arrangement of working hours during the week, with the approval of the union's steward, to enable the employees to start on such trips earlier than the regular quitting hour. Id. See Dun. Dig. 10405.

Neither negligence on the employer's part nor contributory negligence on the employee's part are involved in a compensation case. Radermacher v. St. Paul City Ry. Co., 214M427, 8NW(2d)466, 145ALR1027. See Dun. Dig. 10396.

Act is highly remedial and is not to be construed so as to exclude an employee from the benefits thereof unless it clearly appears that he does not come within the protection of the act. Kiley v. Sward-Kemp Drug Co., 214M548, 9NW(2d)237. See Dun. Dig. 10385.

Act is highly remedial and should not be construed so as to exclude an employee from benefits thereof unless it clearly appears that he does not come within the protection of the act. Nelson v. Creamery Package Mfg. Co., 215M25, 9NW(2d)320. See Dun. Dig. 10385.

The distinctions between a proceeding under the compensation law and an action for wrongful death is that in the latter there must be tort or negligence as a foundation for recovery, whereas under the compensation act fault or negligence on the part of the employer is not involved. Under the latter the measure of damages is the monetary loss, within statutory limits, to the widow and next of kin of the deceased; under the former, compensation is based on the wage of the decedent at the time of his death, and a definite proportion of such wage is awarded, to the dependent under the terms of the act. Fehlan v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 10385.

The act creates new substantive rights and is not a mere amendment of the common law. It goes far beyond merely affording new remedial rights for old substantive rights. It works a fundamental change in the obligations of employers to their employees. The right to compensation given by the act is independent of fault. It is not based on tort, but is of a contractual nature. A basic thought underlying the act is that the business or industry affected shall in the first instance pay for accidental injuries as a business expense or a part of the cost of production. Id. See Dun. Dig. 10385.

The underlying purpose of both the Workmen's Compensation Act and the death by wrongful act statute is to provide something in the way of relief or compensation to those who have been injured by the untimely death of one to whom they were accustomed to look for sustenance and support, and both provide for rights and remedies unknown to the common law and are purely of statutory origin. Id. See Dun. Dig. 10385.

City employees working out relief furnished them cannot waive their right to benefit of compensation act, notwithstanding they are subject to epileptic fits and insurance companies hesitate to issue policies covering them. Op. Atty. Gen., (523a-17), Jan. 30, 1940.

A waiver signed by one taking employment from a city cannot affect liability for compensation. Op. Atty. Gen., (523E-1), April 18, 1940.

Volunteer village firemen servicing fires outside of municipality are covered by Workmen's Compensation Act, including time they are proceeding by quickest route, on foot, or in their own cars, directly to the fire instead of first going to fire station. Op. Atty. Gen. (523e-4), Apr. 22, 1941.

If emergency volunteer firemen are appointed prior to commencement of training period, they are covered by act during such training period. Op. Atty. Gen. (688P-4), Mar. 12, 1942.

4272-2. All employers shall be insured—Exceptions.

Authority of agent of liability and compensation insurer was extended by agent's conduct of its affairs known to insurer to include apparent authority to extend credit and to reinstate policy. Steidel v. Metcalf, 210M101, 297NW324. See Dun. Dig. 10391.

Finding that at time employee was injured insurance was in force, sustained. Id.

Commission has authority to determine whether or not insurance was in force at time of injury to employee. Id. See Dun. Dig. 10421.

A subcontractor doing hauling on a highway construction project and its general insurer were liable for compensation for death of a truck driver, though contract between subcontractor and principal contractor required latter to pay wages and insurance premiums and it also had a general insurer. Finn v. Phillippi Bros., 211M130, 300NW441. See Dun. Dig. 10395.

Insurer is in no better position than employer to question legality of employment. Sexton v. County of Waseca, 211M422, 1NW(2d)394. See Dun. Dig. 10391.

Where an employer by means of a scheme or device in form of a lease seeks to evade responsibility under act but its compensation insurer is not a party thereto and has no knowledge thereof, employer is liable for death of one working on leased premises, but compensation insurer is not. Washel v. Tankar Gas, 211M403, 2NW (2d)43. See Dun. Dig. 10391.

The compulsory insurance feature of the Compensation Act means continuous and uninterrupted coverage during the policy year, and if insurer exercises the right of cancellation for nonpayment of premiums and later reinstates the policy during the policy year, there must not be a lapse of coverage. Annala v. Bergman, 213M173, 6NW (2d)37. See Dun. Dig. 10391.

It is optional with municipal officials to insure liability of employees. Op. Atty. Gen., (523E-4), March 15, 1940.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

Drivers of school buses may be either employees or independent contractors, depending upon terms of contract. Op. Atty. Gen. (523f), Oct. 15, 1940.

State teachers college may not take out workmen's compensation insurance for its employees. Op. Atty. Gen. (523g-15), May 21, 1943.

For purpose of workmen's compensation insurance, school districts should consider bus drivers as employees rather than independent contractors. Op. Atty. Gen. (523f), Oct. 28, 1943.

4272-3. Liability of employer exclusive.

Fact that person suing for personal injuries may have received payments from defendant's compensation insurer could in no sense be a bar to his common law action based on negligence if he in fact was not an employee engaged within scope of his employment at time of his injury. Hasse v. V., 208M457, 294NW475. See Dun. Dig. 10386.

An underground miner who became afflicted with a disabling ailment not covered by Compensation Act through negligence of employer in failing properly to ventilate has an action at law for damages. Applequist v. O., 209M230, 296NW13. See Dun. Dig. 10398.

In action for personal injuries, it was for defendant to plead and prove that relation of employer and employee existed between the parties and also that he was either insured or "self-insured", in order to move for

directed verdict on ground that sole remedy of plaintiff was under workmen's compensation act. Anderson v. Hegna, 212M147, 2NW(2d)820. See Dun. Dig. 10386.

4272-4. Application of act.

For cases under former statute, see §4268.

See also notes under §4326(g)(2).

Evidence that employer was engaged, independently of his farming operations, in business of cutting and dealing in cord wood, justifies holding that latter operation is not one of farming. Stahl v. P., 206M413, 288 NW854. See Dun. Dig. 10394.

An employment is not casual where the employee is hired on a part time basis to render services at regularly recurring periods, and is paid extra compensation for certain kinds of service. Chisholm v. D., 207M614, 292 NW268. See Dun. Dig. 10394.

Employee engaged in a maintenance activity upon premises of a company which had suspended operations was protected, because his employment, though casual, was within usual course of business of that company. Chriss v. Compo Board Co., 211M333, 1NW(2d)129. See Dun. Dig. 10394.

Insurance maintained by church for benefit of "employee" covered housekeeper for priest. Berger v. Church of St. Patrick, 212M345, 3NW(2d)590. See Dun. Dig. 10394.

Nature of employment taken as a whole is test as to whether an employee is a farm laborer, and a farmer with considerable equipment who did the work for others with his machine and hired man for the purpose was not engaged in a commercial enterprise, and his employee was a farm laborer. Partridge v. Blackbird, 213 M228, 6NW(2d)250. See Dun. Dig. 10394.

Whether an employee is a farm laborer is determined by whole character of employment, and neither particular work being done at time of injury nor place of its performance is determinative. Schroepfer v. Hudson, 214M 17, 7NW(2d)336. See Dun. Dig. 10394.

An employee whose employment was that of a carpenter in connection with employer's building contracting business did not become a farm laborer because of fact that at moment of injury he was working on a farm. Id.

4272-5. Liability of others than employer.

(1) * * * * *.

(2) * * * * *.

(3) In every case arising under the provisions of Subdivision (2) of aforesaid Section 4272-5 when the state is the employer no settlement between such third party and the employee shall be valid unless within a reasonable time prior thereto notice thereof has been given to the state, and if the state as employer has paid compensation or medical benefits to said employee under the provisions of the workmen's compensation act and has become subrogated to the rights of said employee or dependents as therein provided, then any settlement between the employee or his dependents and said third party shall be void as against the subrogation rights of the state.

In the event any action at law is instituted by said employee or dependents against such third party for recovery of damages, said employee, dependents or his or their attorney shall also serve on the state a copy of the complaint and notice of trial or note of issue in such action. Any judgment rendered therein shall be subject to a lien of the state for the amount to which it is entitled to be subrogated under the provisions of (2) of aforesaid Section 4272-5.

In every case in which the state is the employer and liable to pay compensation or is subrogated to the rights of the employee or dependents all notices and services herein provided for shall be made on the Attorney General and the State Industrial Commission. (As amended Act Apr. 19, 1943, c. 499, §1.)

Where premises are in exclusive possession of a lessee, the lessor having no business thereon, the two are not engaged in the accomplishment of the same or related purposes. Murphy v. B., 206M537, 289NW567. See Dun. Dig. 10393.

In case involving electrocution of employee by defendant's uninsulated electric wire, where recovery is sought by employer's insurer, as subrogee, for payments made to employee's dependents, questions of negligence, assumption of risk, and contributory negligence of both employee and employer were for jury. Standard Acc. Ins. Co. v. M., 207M24, 289NW782. See Dun. Dig. 10408.

Solicitation of orders by salesman of wholesaler upon premises of retailer does not amount to either a furtherance of a common enterprise or to accomplishment of same or related purposes. Smith v. O., 208M77, 292NW 745 See Dun. Dig. 10395.

In action brought by insurer as subrogee to recover compensation benefits paid to family of deceased workman pursuant to its policy with his employer, contributory negligence of deceased workman is a bar. Hartford Accident & Ind. Co. v. Schutt Realty Co., 210M 235, 297NW718. See Dun. Dig. 10408.

Vending and delivery of supplies by a third party to the workmen's employer does not amount to either a furtherance of a common enterprise or to the accomplishment of the same or related purposes. Gentle v. Northern States Power Co., 213M231, 6NW(2d)361. See Dun. Dig. 10393, 10408.

An electric power company, a customer to whom it furnishes electricity, and a contractor employed by customer to perform priming, painting, spraying, and similar work on its building are not engaged in accomplishment of same or related purposes. Id.

Where injured state employee brought action against third party of which state was not aware of until after recovery and payment of attorney's fees, state must be reimbursed for full amount paid by it to injured employee and medical expenses without deductions for any part of attorney's fees paid by employee to attorney. Op. Atty. Gen. (523A-28), Oct. 1, 1941.

(1).

Permission for, and manner of, self insurance are subject to limitations of §4272-2, with which federal government has never complied. Wagner v. City of Duluth, 211 M252, 300NW820. See Dun. Dig. 10391.

Dependents of deceased WPA worker, fatally injured in line of duty, who accept compensation for his death pursuant to federal statute, are not precluded from bringing action against a third party whose negligence caused death. Id. See Dun. Dig. 10407.

Act was passed to simplify and rearrange obligation of master to servant in relation to injuries received in the employment, and there was no intent to change or interfere with the relation between the servant and third person or to interfere with servant's right of action against third person, except as that right might affect compensation from the master. Gleason v. Geary, 214M 499, 8NW(2d)808. See Dun. Dig. 10407. See 27MinnLaw Rev585.

A "chicken picker" in a hatchery engaged in processing farm products for the market was not such as to classify her employer as one engaged in a "common enterprise" or the "accomplishment of the same or related purposes" with an independent contractor doing repair work for her employer. Id.

Terms "common enterprise" and the "accomplishment of the same or related purposes" of employers mean that their employees were at the time and place of injury engaged on the same project and thereby exposed to the same or similar hazards created by such mutual engagements. Id.

(2).

Section 9657 is not amended or supplemented by §4272-5(2) so as to affect rights of next of kin, who are not dependents. Joel v. P., 206M580, 289NW524. See Dun. Dig. 2608.

Where plaintiff, an employee of a partnership of which defendant was a member, was injured in a collision between a truck owned and operated by him and defendant's truck operated by another employee of partnership, both drivers being engaged in due course of partnership business and in furtherance of a common enterprise, and where neither defendant in his individual capacity nor driver of his truck was insured or self-insured as required by this section, but both drivers and partnership were insured under compensation act, plaintiff's motion to strike from defendant's answer allegations in respect of plaintiff's election to take benefits accruing under compensation act was properly granted in common-law action for damages based on negligence of defendant's driver. Gleason v. Sing, 210M253, 297NW720. See Dun. Dig. 10408.

Third party liability has for its basis negligent conduct by one not employer of injured workman, and amount of recovery is measured by common-law standard of damages, whereas an employer's liability under compensation act is determined by standards fixed thereby. Id.

Where city chief of police was injured in automobile accident in course of his employment and made settlement with negligent third party and executed a release to such third party in which city and insurance carrier joined, insurance carrier was not relieved of liability for further disability referable to the same accident, computation of full compensation being computed in the regular way under the act and proper credit being given for net amount received from third person. Op. Atty. Gen. (523a-15), Nov. 2, 1942.

4272-6. Joint employers shall contribute.

A demonstrator was employe of a department store though amount equal to her wages was paid to store by company whose goods were being demonstrated. Ekrem v. H., 209M337, 296NW180. See Dun. Dig. 10395.

4272-11. Disputes over liability—Payment of benefits—Reimbursement—Attorneys' fees.—Where benefits are payable under the provisions of this act, and a dispute arises between two or more employers or insurers as to which of said employers or insurers is liable for payment thereof, the commission may direct the payment of said benefits by one or more of said

employers or insurers pending the determination of liability. Upon determination of liability the commission shall order the party liable for said benefits to reimburse any other party for payments made with interest at the rate of five per cent per annum. The commission may also award reasonable attorney fees in favor of the claimant and against the party held liable for said benefits. (Act Mar. 14, 1941, c. 64, §1.) [176.255].

4272-12. Same—Order for payment—Use as evidence.—Any order of the commission under the provisions of this act directing the payments of said benefits by one or more of said employers or insurers pending the determination of liability shall not be used as evidence before any referee, commission, or court in which said dispute is pending. (Act Mar. 14, 1941, c. 64, §2.) [176.255]

4273. Minors have power to contract, etc.

Boys 16 years of age or younger employed by state in forest fire fighting crews are employees of state. Op. Atty. Gen. (523g-3), Feb. 9, 1943.

4274. Schedule of compensation.—Following is the schedule of compensation:

(a) For injury producing temporary total disability, 66⅔ per cent of the daily wage at the time of injury, subject to a maximum compensation of $20.00 per week and a minimum of $8.00 per week; provided, that if at the time of injury the employee receives wages of $8.00 or less per week, he shall receive the full amount of such wages per week; this compensation shall be paid during the period of such disability, not beyond 300 weeks payment to be made at the intervals when the wage was payable, as nearly as may be.

(b) In all cases of temporary partial disability the compensation shall be 66⅔ per cent of the difference between the daily wage of the workman at the time of injury and the wage he is able to earn in his partially disabled condition; this compensation shall be paid during the period of such disability, not beyond 300 weeks, payment to be made at the intervals when the wage was payable, as nearly as may be, and subject to the maximum stated in clause (a); and, if the employer does not furnish the workman with work which he can do in his temporary partially disabled condition and, after a reasonably diligent effort, he is unable to procure such work with another employer, the commission may fix a rate of compensation to be paid to the workman during the period of such disability and unemployment, not beyond 300 weeks, which shall be based upon the percentage of his general physical disabililty as may be determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission.

(c) For the permanent partial disability from the loss of a member the compensation during the healing period, but not exceeding 15 weeks, shall be 66⅔ per cent of the difference between the daily wage of the workman at the time of injury and the wages he is able to earn, if any, in his partially disabled condition, unless on application to the commission, made in the manner provided in section 19 for additional medical service, the period is extended by the commission for not to exceed an additional 35 weeks; and thereafter, and in addition thereto, compensation shalll be that named in the following schedule:

(1) For the loss of a thumb, 66⅔ per cent of the daily wage at the time of injury during 60 weeks;

(2) For the loss of a first finger, commonly called index finger, 66⅔ per cent of the daily wage at the time of injury during 35 weeks;

(3) For the loss of a second finger, 66⅔ per cent of the daily wage at the time of injury during 30 weeks;

(4) For the loss of a third finger, 66⅔ per cent of the daily wage at the time of injury during 20 weeks;

(5) For the loss of a fourth finger, commonly called the little finger, 66⅔ per cent of the daily wage at the time of injury during 15 weeks;

(6) The loss of the first phalange of the thumb, or of any finger, is considered equal to the loss of one-half of such thumb or finger and compensation shall be paid at the prescribed rate during one-half the time specified for such thumb or finger;

(7) The loss of one and one-half or more phalanges is considered as the loss of the entire finger or thumb; provided, that in no case shall the amount received for more than one finger exceed the amount provided in this schedule for the loss of a hand;

(8) For the loss of a great toe, 66⅔ per cent of the daily wage at the time of injury during 30 weeks;

(9) For the loss of one of the toes, other than a great toe, 66⅔ per cent of the daily wage at the time of injury during ten weeks;

(10) The loss of the first phalange of any toe is considered equal to the loss of one-half of such toe, and compensation shall be paid at the prescribed rate during one-half the time specified for such toe;

(11) The loss of one and one-half or more phalanges is considered as the loss of the entire toe;

(12) For the loss of a hand, not including the wrist movement, 66⅔ per cent of the daily wage at the time of injury during 150 weeks;

(13) For the loss of a hand, including the wrist movement, 66⅔ per cent of the daily wage at the time of injury during 175 weeks;

(14) For the loss of an arm, 66⅔ per cent of the daily wage at the time of injury during 200 weeks;

(15) Amputation of the arm below the elbow is considered the loss of a hand, including wrist movement, if enough of the forearm remains to permit the use of an effective artificial member, otherwise it is considered the loss of an arm;

(16) For the loss of a foot, not including the ankle movement, 66⅔ per cent of the daily wage at the time of injury during 125 weeks;

(17) For the loss of a foot, including the ankle movement, 66⅔ per cent of the daily wage at the time of injury during 150 weeks;

(18) For the loss of a leg, if enough of the leg remains to permit the use of an effective artificial member, 66⅔ per cent of the daily wage at the time of injury during 175 weeks;

(19) For the loss of a leg so close to the hip that no effective artificial member can be used, 66⅔ per cent of the daily wage at the time of injury during 200 weeks;

(20) Amputation of the leg below the knee is considered the loss of a foot, including ankle movement, if enough of the lower leg remains to permit the use of an effective artificial member, otherwise it is considered the loss of a leg;

(21) For the loss of an eye, 66⅔ per cent of the daily wage at the time of injury during 100 weeks;

(22) For the complete permanent loss of hearing in one ear, 66⅔ per cent of the daily wage at the time of injury during 52 weeks;

(23) For the complete permanent loss of hearing in both ears, 66⅔ per cent of the daily wage at the time of injury during 156 weeks;

(24) For the loss of an eye and a leg, 66⅔ per cent of the daily wage at the time of injury during 350 weeks;

(25) For the loss of an eye and an arm, 66⅔ per cent of the daily wage at the time of injury during 350 weeks;

(26) For the loss of an eye and a hand, 66⅔ per cent of the daily wage at the time of injury during 325 weeks;

(27) For the loss of an eye and a foot, 66⅔ per cent of the daily wage at the time of injury during 300 weeks;

(28) For the loss of two arms, other than at the shoulder, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(29) For the loss of two hands, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(30) For the loss of two legs, other than so close to the hips that no effective artificial member can be used, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(31) For the loss of two feet, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(32) For the loss of one arm and the other hand, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(33) For the loss of one hand and one foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(34) For the loss of one leg and the other foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(35) For the loss of one leg and one hand, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(36) For the loss of one arm and one foot, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(37) For the loss of one arm and one leg, 66⅔ per cent of the daily wage at the time of injury during 400 weeks;

(38) For serious disfigurement not resulting from the loss of a member or other injury specifically compensated, materially affecting the employability of the injured person in the employment in which he was injured or other employment for which the employee is then qualified, 66⅔ per cent of the daily wage at the time of injury during such period as the commission may determine, not beyond 75 weeks;

(39) Where an employee sustains concurrent injuries resulting in concurrent disabilities, he shall receive compensation only for the injury which entitles him to the largest amount of compensation, but this does not affect liability for serious disfigurement materially affecting the employability of the injured person or liability for the concurrent loss of more than one member, for which members compensations are provided in the specific schedule and in clause (e);

(40) In all cases of permanent partial disability it is considered that the permanent loss of the use of a member is equivalent to and draw the same compensation as the loss of that member, but the compensation in and by this schedule provided shall be in lieu of all other compensation in such cases, except as otherwise provided by this section;

In the event a workman has been awarded, or is entitled to receive, a compensation for loss of use of a member under any workmen's compensation law, and thereafter sustains a loss of such member under circumstances entitling him to compensation therefor under the Workmen's Compensation Act, as amended, the amount of compensation awarded, or that he is entitled to receive, for such loss of use, is to be deducted from the compensation due under the schedules of this section for the loss of such member, provided, that the amount of compensation due for the loss of the member caused by the subsequent accident is in no case less than 25 per cent of the compensation payable under the schedule of this section for the loss of such member;

(41) In cases of permanent partial disability due to injury to a member, resulting in less than total loss of such member, not otherwise compensated in this schedule, compensation shall be paid at the prescribed rate during that part of the time specified in the schedule for the total loss of the respective member which the extent of injury to the member bears to its total loss;

(42) All the compensations provided in this clause for loss of members or loss of the use of members are subject to the limitations as to maximum and minimum stated in clause (a);

(43) In addition to the compensation provided in this schedule for loss or loss of the use of a member, the compensation during the period of retraining for a new occupation, as certified by the division of reeducation, operating under Laws 1919, Chapter 365, shall be 66⅔ per cent of the daily wage at the time of the injury, not beyond 25 weeks, provided the injury is such as to entitle the workman to compensation for at least 75 weeks in the schedule of indemnities for permanent impairments, and provided the commission, on application thereto, finds that such retraining is necessary and makes an order for such compensation;

(44) In all cases of permanent partial disability not enumerated in this schedule, the compensation shall be 66⅔ per cent of the difference between the daily wage of the workman at the time of the injury and the daily wage he is able to earn in his partially disabled condition, subject to a maximum of $20.00 per week; and continue during disability, not beyond 300 weeks, and if the employer does not furnish the workman with work which he can do in his permanently partially disabled condition and, after a reasonably diligent effort, he is unable to procure such work with another employer, the commission may fix a rate of compensation to be paid to the workman during the period of his unemployment, not beyond 300 weeks, which is to be based upon the percentage of his general physical disability as determined from competent medical testimony adduced at a hearing before a referee, a commissioner, or the commission.

(d) For permanent total disability, as defined in clause (e), 66⅔ per cent of the daily wage at the time of the injury, subject to a maximum compensation of $20.00 per week and a minimum compensation of $8.00 per week. If, at the time of the injury, the employee receives wages of $8.00 or less per week, he shall receive the full amount of his wages per week. This compensation shall be paid during the permanent total disability of the injured person, but the total amount payable under this clause shall not exceed $10,000 in any case, payments to be made at the intervals when the wage was payable as nearly as may be. In case an employee who is permanently and totally disabled becomes an inmate of a public institution, no compensation shall be payable during the period of his confinement in such institution, unless he has wholly dependent on him for support some person named in section 15, clauses (1), (2), or (3), (whose dependency shall be determined as if the employee were deceased), in which case the compensation provided for in section 15, during the period of such confinement, shall be paid for the benefit of persons so dependent during dependency.

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

(f) In case a workman sustains an injury due to an accident arising out of and in the course of his employment, and during the period of disability caused thereby death results approximately therefrom, all payments previously made as compensation for such injury shall be deducted from the compensation, if any, due on account of the death, and accrued compensation due to the deceased prior to his death, but not paid, is payable to such dependent persons or legal heirs as the commission may order without probate administration.

(g) If any employee entitled to the benefits of the workmen's compensation law is a minor or an apprentice of any age and sustains injuries due to an accident arising out of and in the course of his employment resulting in permanent total or permanent

partial disability, the weekly earnings, for the purpose of computing the compensation to which he is entitled, shall be the weekly earnings which such minor or apprentice would probably earn after arriving at legal age or completing the apprenticeship, if uninjured, which probable earnings shall be approximately the average earnings of adult journeymen workmen of the same sex below the rank of superintendent or general foremen in the department of the plant or industry in which such minor or apprentice was employed at the time of his injury. (As amended Act Apr. 28, 1941, c. 522, §1; Apr. 19, 1943, c. 496, §1.)

1. In general.

The test of an injured employee's right to continuing compensation is not amount he is actually receiving in wages at determinative moment, but his ability to earn rather than figure fixed by "charity" of employer. Gildea v. State, 208M185, 293NW598. See Dun. Dig. 10410.

7. Permanent total disability.

In proceeding for compensation for an accident causing an aggravation or acceleration of an existing disease, point was made that if employee is entitled to benefits they should be limited to two years, on theory that disease would have progressed to disability in that time, but was not determined. Swanson v. American Hoist & Derrick Co., 214M323, 8NW(2d)24. See Dun. Dig. 10397.

11. Traumatic neurosis.

Evidence held to conclusively establish that employee who fell 76 feet when building collapsed was suffering from traumatic neurosis which materially impaired his earning power and entitled him to additional compensation, though there was a complete recovery as far as fractures were concerned. Soderquist v. McGough Bros., 210M123, 297NW565. See Dun. Dig. 10417.

12. Compensation accrued at death.

Original jurisdiction to determine heirship or who may be entitled to take as beneficiaries under a will lies wholly with probate court. Determination of surviving spouse and next of kin for distribution of recovery under death by wrongful act statute lies wholly with the district court. Determination of who are "dependent persons or legal heirs" entitled to accrued compensation due to decedent prior to death lies exclusively with the industrial commission under the Workmen's Compensation Act. Fehland v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 10410, 10411, 10418c, 10421.

Accrued compensation is not to be distributed by the laws of inheritance or under the will of the deceased employe, but the persons entitled to receive the same on the employe's death are those enumerated in the statute, and determination of those who are to receive and distribution of the same is exclusively a matter for the industrial commission. Id. See Dun. Dig. 10410, 10411, 10412.

Accrued compensation due to an employe prior to death but not paid is not a part of deceased's estate and therefore does not pass to the personal representative. Id. See Dun. Dig. 10418c.

"Accrued compensation" includes claims for reimbursement of medical and hospital expenses paid by worker before his death. Id. See Dun. Dig. 10410, 10415, 10418c.

Section authorizes the commission to determine who "such dependent persons or legal heirs" are, and the purpose of section is to place the deceased workman's dependents where they may receive the benefits theretofore derived from him before that support was taken away from them. Id. See Dun. Dig. 10411.

4275. Dependents and allowances.

The uniform Partnership Act is founded upon the aggregate, and not on the entity theory so far as all substantive rights, liabilities and duties are concerned, and husband and wife operating a partnership cannot be dependents of a minor son within meaning of Workmen's Compensation Act. Thomas v. Ind. Com., 243Wis231, 10 NW(2d)206, 147ALR103. See Dun. Dig. 7347, 10411.

Where an employee died while attempting to enforce his claim, and though he had lost his right to appeal by failure to file notice of appeal within 30 days, dependent widow under her separate and distinct right need not start a new proceeding to urge her right but may have her name substituted for that of her husband in the proceedings begun by him, and the commission on affirming order of referee granting the substitution could order a rehearing and taking of additional testimony before the referee. Gustafson v. Ziesmer & Vorlander, 213 M253, 6NW(2d)452. See Dun. Dig. 10421.

(1).

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 206M99, 287NW787. See Dun. Dig. 10418.

(11).

Where widow received, in addition to weekly compensation, lump sum payments for a stated number of the "last" weekly payments to become due to her in the future, and remarried and thus becomes entitled to 104⅓ weeks compensation as a lump sum settlement, commission has power to deduct lump sum payments from lump sum settlement upon remarriage to determine net amount of award. Olson v. National Tea Co., 212M215, 3NW(2d)225. See Dun. Dig. 10412(47).

Where a widow has been overpaid at time of her remarriage, amount due her may be adjusted by deducting the overpayments, and she may be charged with payments received in determining the amount actually due her, though of course no such deduction could be made of an ordinary debt. Id.

(19).

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 206M99, 287NW787. See Dun. Dig. 10418.

Compensation to partial dependents, father and mother who are sole dependents, is the full amount of their income loss, and if that loss is only $3.00 per week that is the amount of benefits to be awarded, and they are not entitled to the minimum of $8.00. Dragovich v. Mille Lacs Region Co-operative Power & Light Ass'n, 212M543, 4NW(2d)352. See Dun. Dig. 10412.

4276. Disability or death resulting from injury—Increase of previous disability—Special compensation fund.—If an employee receives an injury which of itself would cause only permanent partial disability, but which, combined with a previous disability, does in fact cause permanent total disability, the employer shall only be liable for the permanent partial disability caused by the subsequent injury.

Provided, however, that in addition to compensation for such permanent partial disability and after the cessation of the payments for the prescribed period weeks, the employee shall be paid by the state the remainder of the compensation that would be due for permanent total disability as provided for by Mason's Minnesota Statutes of 1927. Section 4274, Subsection (d), out of a special fund known as the special compensation fund; provided, further, that all employees who are now receiving, or who may hereafter become entitled to receive, compensation for permanent total disability, whether from the employer or from said special fund, after receiving the full amount of $10,000 for such disability, shall be paid from said fund an additional sum of not to exceed $2,500, in the same manner and with the same limitations except as to amounts, at the rate of one-half of the wages they were receiving at the time of the injury which rendered them permanently totally disabled, subject to a maximum of $15.00 per week and a minimum of $8.00 per week, but the full amount of their wages if at the time of such injury they were receiving less than $8.00 per week. Said fund shall be created for such purposes in the following manner:

A. In every case of the death of an employee resulting from an accident arising out of and in the course of his employment where there are no persons entitled to compensation, the employer shall pay to the industrial commission the sum of $300.00.

B. Whenever an employee shall suffer a compensable injury, which results in permanent partial disability by reason of the total loss of a member or members, or injury to a member or members resulting in less than a total loss of such member, and which injury entitles him to compensation pursuant to Mason's Minnesota Statutes of 1927, Section 4274, paragraph (c), the employer or his insurer shall, in addition to the compensation provided for in said paragraph (c), pay to the industrial commission for the benefit of the special compensation fund a lump sum, without interest deductions, equal to two per cent of the total compensation to which the employee is entitled to under said paragraph (c) for said permanent partial disability, said sum to be paid to the industrial commission as soon as the total amount of the permanent partial disability payable for the particular injury is determined by the industrial commission, or arrived at by the agreement of the parties and such amount is approved by the industrial commission.

Such sums as are paid to the industrial commission pursuant to the provisions hereof shall be by it deposited with the state treasurer for the benefit of the special compensation fund and be used to pay the benefits

provided by this act. All money heretofore arising from the provisions of this section shall be transferred to this special compensation fund. All penalties collected for violation of any of the provisions of this act shall be credited to this special compensation fund.

The state treasurer shall be the custodian of this special fund and the industrial commission shall direct the distribution thereof, the same to be paid as other payments of compensation are paid. In case deposit is or has been made under the provisions of paragraph A of this section, and dependency later is shown, or if deposit is or has been made pursuant to either paragraphs A or B hereof by mistake or inadvertence, or under such circumstances that justice requires a refund thereof, the state treasurer is hereby authorized to refund such deposit upon order of the industrial commission. (As amended Act Apr. 22, 1941, c. 384, §1.)

Commission has no power to require employers or insurers to make final payment and deposit same to special compensation fund, in cases of absent employees. Op. Atty. Gen. (523A-8), Mar. 3, 1942.

4279. Medical and surgical treatment.

Evidence held to sustain finding that employee suffered intermittent total disability necessitating medical care and attention, as result of sprained back which became chronic. Paul v. T., 206M74, 287NW856. See Dun. Dig. 10415.

Employer is liable for compensation for all legitimate consequences following an accident, including unskillfulness or error of judgment of physician furnished. Id.

An employee who insists upon treatment of his compensable injury by a physician of his own choice can obtain reasonable value of services rendered by such physician although employer is willing and ready to knowledge of employee to furnish and pay for proper medical treatment by a physician of employer's choice but not otherwise. Carmody v. C., 207M419, 291NW895. See Dun. Dig. 10415.

Right of injured employee to a change of physicians and to charge employer and its insurer with reasonable expense resulting therefrom is conditioned upon approval of the industrial commission, but where commission fails to act and informs employee to get insurer's consent thereto upon erroneous theory of law that employer and its insurer have the exclusive right to appoint the attending physician, and employee then seeks but insurer refuses such consent by insisting upon its claim of exclusive right to make such selection, employee is entitled to reimbursement. Morrell v. C., 208M132, 293NW 144, 142ALR199. See Dun. Dig. 10415.

Where there is residual disability and promise of aid from surgery which should go far to restore physical efficiency, employee is entitled to additional surgical attention at expense of employer. Gildea v. State, 208M185, 293NW598. See Dun. Dig. 10415.

No limit is placed upon amount to be allowed for medical, surgical, and hospital expenses "except the necessity and reasonableness thereof", and the commission may grant a rehearing at any time on the propriety of further allowance as medical benefits necessitated by the original injury, and employer is not relieved by lack of time. Fehland v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 10415.

4280. Notice of injury, etc.

Evidence held to sustain finding that injured employee gave proper notice to his employer of intermittent total disability occasioned by a sprained back. Paul v. T., 206M74, 287NW856. See Dun. Dig. 10420.

4282. Limit of actions.

Once the industrial commission has acquired jurisdiction by the filing of a claim petition or the occurrence of any other act constituting a "proceeding", its jurisdiction attaches and continues until it is cut off by judgment or certiorari, and there was a "proceeding" though no formal claim petition was filed within 6 years, where negotiations continued and communications were had between claimant, the commission and city employer, and some money was paid and medical services furnished by the city. Rasmussen v. City of St. Paul, 215M458, 10NW (2d)419. See Dun. Dig. 10419.

Limitation affecting right to claimed allowance for medical expenses require consideration of sections relating to notification of commission of discontinuance of payments and awards of new hearing. Op. Atty. Gen. (523a-20), Dec. 18, 1940.

It is doubtful whether general limitations would apply to a proceeding under this Act. Id.

4283. Examination and verification of injury.

(1) * * * * *.

(2) * * * * *.

(3) * * * * *.

(4) In all death claims where the cause of death is obscure or disputed, any interested party, including the Medical Board provided for in Section 11, may request an autopsy and, if denied, the commission shall, upon petition and proper showing, order the same. If any dependent claiming compensation or benefits does not consent to such autopsy within the time fixed by the commission in such order, all dependents shall forfeit all rights to compensation. The cost of such autopsy shall be borne by the party demanding the same. (As amended Apr. 24, 1943, c. 633, §1.)

(5) * * * * *.

4287. Compensation preferred claim.

Accrued workmen's compensation due under award to the deceased prior to death but not paid is exempt from seizure or sale for the debts or liabilities of the deceased worker. Fehland v. City of St. Paul, 215M94, 9NW(2d) 349. See Dun. Dig. 3511, 3680-3698, 10418c.

4288. Employer to insure employees—Exceptions.

Nylund v. T., 209M79, 295NW4 11; note under §4290(4).

Washel v. Tankar Gas, 211M403, 2NW(2d)43; note under §4290(1).

A subcontractor doing hauling on a highway construction project and its general insurer were liable for compensation for death of a truck driver, though contract between subcontractor and principal contractor required latter to pay wages and insurance premiums and it also had a general insurer. Finn v. Phillippi Bros., 211M130, 300NW441. See Dun. Dig. 10395.

An insurer, if he chooses to reinstate a cancelled policy, must do so as of date of cancellation and is not permitted to designate a day anything short of that time. Annala v. Bergman, 213M173, 6NW(2d)37. See Dun. Dig. 10391.

4289. Who may insure—Policies.

Washel v. Tankar Gas, 211M403, 2NW(2d)43; note under §4290(1).

Commission has authority to determine whether or not insurance was in force at time of injury to employee. Steidel v. Metcalf, 210M101, 297NW324. See Dun. Dig. 10421.

Insurance maintained by church for benefit of "employee" covered housekeeper for priest. Berger v. Church of St. Patrick, 212M345, 3NW(2d)590. See Dun. Dig. 10391, 10394.

Rule that if insurer exercises right of cancellation for non-payment of premiums and later reinstates policy during policy year, there must not be a lapse of coverage, is not subject to criticism that it imposes a liability which insurer did not assume and is remaking contract of insurer without his consent. Annala v. Bergman, 213 M173, 6NW(2d)37. See Dun. Dig. 10391.

"Over-all Retrospective Coverage" plan of insurance. Op. Atty. Gen., (517J), Feb. 7, 1940.

City may in its discretion pay salary to policeman while he is receiving disability payments from insurance company. Op. Atty. Gen. (590a-41, 523e-1), July 25, 1942.

State teachers college may not take out workmen's compensation insurance for its employees. Op. Atty. Gen. (523g-15), May 21, 1943.

For purpose of workmen's compensation insurance, school districts should consider bus drivers as employees rather than independent contractors. Op. Atty. Gen. (523f), Oct. 28, 1943.

4290. Certain persons liable as employers—Contractors—Subcontractors, etc.

(1).

Where an employer by means of a scheme or device in form of a lease seeks to evade responsibility under act, but its compensation insurer is not a party thereto and has no knowledge thereof, employer is liable for death of one working on leased premises, but compensation insurer is not. Washel v. Tankar Gas, 211M403, 2NW(2d) 43. See Dun. Dig. 10391.

(4).

Holder of a permit under §§6394-14 to 6314-40 to cut and remove timber from state land may be considered a general contractor of state so as to be liable to pay workmen's compensation to employee of a sub-contractor who cuts and removes timber without carrying insurance as provided by §4290(4). Nylund v. T., 209M79, 295 NW411. See Dun. Dig. 10391.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

4291. Liability of party other than employer—Procedure. [Repealed.]

2. Subdivision 1.

In action brought by insurer as subrogee to recover compensation benefits paid to family of deceased workman pursuant to its policy with his employer, contributory negligence of deceased workman is a bar. Hartford Accident & Ind. Co. v. Schutt Realty Co., 210M235, 297NW718. See Dun. Dig. 10408.

3. Subdivision 2.

Statute contemplates injury originating under circumstances which render a third party and the employer

liable, and if no common connection, relation or interest between third party and employer is established, employee may recover full damages from third party, and it is immaterial that employee has been awarded compensation from his employer. McGough v. M., 206M1, 287 NW857. See Dun. Dig. 10408.

Employer is not entitled to subrogation or to credit on compensation of amount recovered by employee from malpracticing physician, though such malpractice increased disability and resulted in increased compensation. Id.

4292. Penalties for unreasonable delay.—Subdivision 1. In all cases of injuries subject to the Workmen's Compensation Act, as amended, payment of compensation commences within 30 days after the employer is notified of the injury or has knowledge thereof, unless within such period the employer or his insurer files with the commission a denial of liability therefor or applies to the commission for an extension of time within which to determine liability. For cause shown, the commission may grant such extension for not more than 30 days. Any employer or insurer who fails, within such 30-day period, to commence payment of compensation or to file with the commission a denial of liability for such injury or to apply to the commission for an extension of time within which to determine liability, shall pay into the special compensation fund a sum equal to the compensation to which the employee or his dependents are entitled for each day of delay after the expiration of such 30-day period in addition to the compensation payable to the employee or his dependents for his injury. If any employer or insurer is granted an extension of time within which to determine liability and fails, within such extension period, to commence payment of compensation or to file a notice of denial of liability therefor, such employer or insurer shall pay into the special compensation fund a sum equal to the compensation to which the employee or his dependents are entitled for each day of delay after the expiration of such extension period in addition to the compensation payable to the employee or his dependents for his injury. If any employer or insurer subject to either of these requirements fails to pay into the special compensation fund the sum so required to be paid within 60 days after the expiration of the 30-day period or the extension period, as the case may be, the commission may require such employer or insurer to pay into the special compensation fund a sum equal to double the compensation to which the employee or his dependents are entitled to for each day of such delay in addition to the compensation payable to the employee or his dependents for his injury. The additional payments herein provided shall be assessed by the Commission against the employer or insurer on the basis of where such delay is chargeable. The insurer shall not be liable for a payment assessed against the employer. The additional payments herein provided shall be paid by the party against whom they are assessed.

Subd. 2. In any case where any proceeding has been instituted or carried on or any defense interposed by any employer or insurer liable to pay compensation hereunder which does not present a real controversy but is merely frivolous or for delay, or where there has been any unreasonable or vexatious delay of payment, or neglect or refusal to pay, or intentional underpayment of any compensation due to any employee or dependent, the commission or the supreme court on appeal may, after reasonable notice and hearing or opportunity to be heard, award, in addition to the compensation payable or to become payable, an amount equal to not more than 25 per cent of the compensation payable or to become payable. To secure information as to any act or omission specified in this subdivision the industrial commission may examine the books and records of any employer or insurance carrier relative to the payment of compensation hereunder, or require any such employer or insurance carrier to furnish any other information relating to the payment of compensation hereunder. In case of an insurer persisting in any act or omission specified in this subdivision, or refusing or failing to alllow the commission to examine its books and records or to furnish such information, the commission shall make complaint in writing to the insurance commissioner, setting forth the facts and recommending the revocation of the license of such insurer to do business in this state, whereupon the commissioner of insurance shall hear and determine the matter as provided in Laws 1919, Chapter 508; and, if any such charge is found true, the commissioner of insurance shall revoke the license of such insurer and thereafter it shall be unlawful for such insurer to write or effect insurance in this state. (As amended Apr. 23, 1943, c. 586, §1.)

4295. Employer to notify commission; etc.

A decision prior to amendment by Laws 1933, c. 74, §1, terminating payments, is final and conclusive as to right to further payments and terminates jurisdiction of commission. Terres v. I., 208M259, 293NW301. See Dun. Dig. 10388.

Once the industrial commission has acquired jurisdiction by the filing of a claim petition or the occurrence of any other act constituting a "proceeding", its jurisdiction attaches and continues until it is cut off by judgment or certiorari, and there was a "proceeding" though no formal claim petition was filed within 6 years, where negotiations continued and communications were had between claimant, the commission and city employer, and some money was paid and medical services furnished by the city. Rasmussen v. City of St. Paul, 215M458, 10 NW(2d)419. See Dun. Dig. 10419.

4297. Proceedings began by petition.

Rules of practice, see Appendix 4.

4302. Procedure in case of dispute.

Rules of practice, see Appendix 4.

Industrial commission may direct payment of workmen's compensation benefits and allow attorneys fees in cases of disputed liability. Laws 1941, c. 64.

A demurrer is neither authorized nor recognized by the compensation act. McGough v. M., 206M1, 287NW857. See Dun. Dig. 10421.

4303. Commission to give hearing on claim petition.

Barlau v. Minneapolis-Moline Power Implement Co., 9NW(2d)6; note under §4315, 176.56.

4304. Rehearing.

Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6; note under §4315, 176.56.

The mere fact that medical experts express divergent opinions as to cause of disability in a workmen's compensation case, heard by a referee, does not obligate commission to open case and appoint a neutral expert. Rehak v. S., 206M96, 288NW22. See Dun. Dig. 10421.

Commission did not abuse its discretion in denying employee's motion for a rehearing as to extent of injuries. Glass v. State Department of Highways, 211M179, 300NW593. See Dun. Dig. 10421.

Where an employee died while attempting to enforce his claim, and though he had lost his right to appeal by failure to file notice of appeal within 30 days, dependent widow under her separate and distinct right need not start a new proceeding to urge her right but may have her name substituted for that of her husband in the proceedings begun by him, and the commission on affirming order of referee granting the substitution could order a rehearing and taking of additional testimony before the referee. Gustafson v. Ziesmer & Vorlander, 213M253, 6NW(2d)452. See Dun. Dig. 10421.

4309. Commission to make award—Who may intervene.

Where employment is concurrent at time of accident and injury, it is proper to make a joint award against both employers. Rice v. Keystone View Co., 210M227, 297 NW841. See Dun. Dig. 10410.

Burden of proof rests upon employee and a recovery cannot rest merely on speculation and conjecture, but if proof furnishes reasonable basis for an inference that injury was cause of employee's ailment, it is sufficient. Kvernstoen v. Nelson, 212M102, 2NW(2d)560. See Dun. Dig. 10406(85).

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10423.

4310. Commission may appoint referee.

Unemployment compensation procedure. Chellson v. State Div. of Emp. and Sec., 214M332, 8NW(2d)42; note under §4337-28, 268.09.

4313. Commission not bound by rules of evidence.

Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6; note under §4315, 176.56.

Burden of proof is upon a claimant to show traumatic character of a hernia. Hillman v. N., 207M377, 291NW 609. See Dun. Dig. 10406.

In a workmen's compensation proceeding, members of industrial commission were not required to close their eyes to what the commission records and files showed concerning labor controversies existing in community where death of union organizer occurred. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 10421.

Where fact to be proved was extra hazardous character of employment, statements threatening personal safety of employee and others employed in similar capacity were admissible as tending to prove that fact. Id.

Whether employment of deceased union organizer was extra hazardous was material in determining whether death arose out of and in course of employment, deceased being shot by an unknown person, and witnesses who heard threats made to decedent could testify thereto, but could not testify to statements made to them by decedent to effect that he had been threatened. Id.

Commission's findings being supported by sufficient competent evidence will not be disturbed because some incompetent evidence was received. Id.

Where it appears that industrial commission on appeal from findings of a referee considered an exhibit excluded by referee, there is no basis for claiming error in exclusion of evidence. Byhardt v. B., 209M391, 296NW504. See Dun. Dig. 10421.

Where traveling salesman in course of his employment was at employer's plant at the night time in an area standing high in homicide and robbery, and claimant for compensation showed probable absence of "reasons personal" to victim, claimant made a prima facie case on that issue which should prevail with no evidence against it, though burden of proof was on such claimant and did not shift. Hanson v. Robitshek-Schneider Co., 209 M596, 297NW19. See Dun. Dig. 10406.

There is no distinction between power of commission over questions arising between employee and insurer or between employer and insurer for benefit of employee and those questions which arise directly between employer and employee. Steidel v. Metcalf, 210M101, 297NW 324. See Dun. Dig. 10421.

Commission has jurisdiction to apply equitable principles in ascertaining whether or not relation of insurer and insured existed at time of accident. Id.

In proceeding under Workmen's Compensation Act in which widow of another employee testified to a conversation between claimants, her deceased husband, and employer, employer was not prejudiced by exclusion, on cross-examination of widow, of her answer to question whether or not she intended to assert a claim against employer, she being cross-examined very fully in respect to her present feeling toward employer. James v. Peterson, 211M481, 1NW(2d)844. See Dun. Dig. 10421.

Supreme court is not authorized to prescribe procedure of industrial commission. Id.

Where an employee's testimony is positive, but inconsistent and impeached by contradiction, commission is not bound to accept it as true. Erickson v. Erickson & Co., 212M119, 2NW(2d)824. See Dun. Dig. 10421.

In proceeding for compensation for death of president and organizer of a truck drivers union, who was found dead in an automobile from bullet wounds, issue being whether death arose out of and in course of employment, court rightly excluded as hearsay and irrelevant a magazine article issued two months before death and headed "Marked for death * * * another labor leader, who was marked for death but escaped". Brown v. General Drivers Union, 212M265, 3NW(2d)423. See Dun. Dig. 10406.

Rule that evidence given at a former trial in which the party objecting was not a party is not permissible applies in workmen's compensation cases, as where certain persons injured in an explosion bring personal injury action against occupant of building and it is attempted to introduce in evidence testimony given in such cases in a compensation proceeding involving death of a person not a party to the personal injury action. Elsenpeter v. Potvin, 213M129, 5NW(2d)499. See Dun. Dig. 10421.

A finding must be based upon evidence received in the course of the trial, and it is not permissible for trier of fact to obtain or consider other evidence. Id.

It was incumbent upon relators to make the record affirmatively show the facts upon which they relied, and court cannot consider transcript of testimony in a negligence case not shown to have been properly made a part of the record on the petition for a rehearing. Id.

Findings of fact by the industrial commission must be based upon competent evidence. Id.

Where an employee died while attempting to enforce his claim, and though he had lost his right to appeal by failure to file notice of appeal within 30 days, dependent widow under her separate and distinct right need not start a new proceeding to urge her right but may have her name substituted for that of her husband in the proceedings begun by him, and the commission on affirming order of referee granting the substitution could order a rehearing and taking of additional testimony before the referee. Gustafson v. Ziesmer & Vorlander, 213M253, 6NW(2d)452. See Dun. Dig. 10421.

Positive unimpeached testimony of credible witnesses, which is not inherently improbable or rendered so by facts and circumstances disclosed in the course of the hearing, must be accepted as true by the trier of facts. Haller v. Northern Pump Co., 214M404, 8NW(2d)464. See Dun. Dig. 10421.

4315. Appeals to industrial commission—Time—Notice—Fee—Transcript—Determination.

Unemployment compensation procedure. Chellson v. State Div. of Emp. and Sec., 214M332, 8NW(2d)42; note under §4337-28, 268.09.

Commission is ultimate trier of facts and has power to annul, modify or amend any findings made by its referee. Walerius v. F., 206M521, 289NW55. See Dun. Dig. 10423.

Where an employee died while attempting to enforce his claim, and though he had lost his right to appeal by failure to file notice of appeal within 30 days, dependent widow under her separate and distinct right need not start a new proceeding to urge her right but may have her name substituted for that of her husband in the proceedings begun by him, and the commission on affirming order of referee granting the substitution could order a rehearing and taking of additional testimony before the referee. Gustafson v. Ziesmer & Vorlander, 213M253, 6NW(2d)452. See Dun. Dig. 10421.

Positive unimpeached testimony of credible witnesses, which is not inherently improbable or rendered so by facts and circumstances disclosed in the course of the hearing, must be accepted as true by the trier of facts. Haller v. Northern Pump Co., 214M404, 8NW(2d)464. See Dun. Dig. 10423.

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10423.

Where members of Industrial Commission are equally divided in opinion on an appeal from a referee's decision awarding compensation, affirmance of referee's decision occurs by operation of law. Nelson v. Creamery Package Mfg. Co., 215M25, 9NW(2d)320. See Dun. Dig. 10423.

An equal division of functioning members of commission on appeal result in affirmance of a finding of referee as a matter of law. Fehland v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 10423.

4316. Appeal based on error.

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10423.

4317. Appeal based on fraud or insufficiency of evidence.

Where the members of the industrial commission are equally divided in opinion on an appeal from a referee's decision awarding compensation to an injured employee, an affirmance of the referee's decision occurs by operation of law. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10423.

4318. Proceedings in case of default—Entry of judgments upon awards.

Where parties to an award of compensation procured judgment thereon without waiting 30 days after default, there is no lack of jurisdiction in district court to render judgment on a stipulation for judgment. Connors v. U., 209M300, 296NW21. See Dun. Dig. 9003c.

Stipulation for judgment in district court on a formal award approving workmen's compensation settlement held not obtained by fraud or misrepresentation. Id. See Dun. Dig. 10422.

Complaint in action to set aside a judgment for fraud held not to show as a matter of law that plaintiff was guilty of such contributory negligence as to preclude it from the relief it seeks. Tankar Gas v. Lumbermen's Mut. Casualty Co., 215M265, 9NW(2d)754, 146ALR1223. See Dun. Dig. 10421a.

A judgment entered pursuant to this section may be set aside for fraud of insurer of employer. Id. See Dun. Dig. 10421a.

4319. New hearing may be granted.

Terres v. I., 208M259, 293NW301; note under §4295.

Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 206M99, 287NW787. See Dun. Dig. 10421.

Order denying additional compensation was reversed because opposed to uncontradicted and seemingly credible testimony showing that injured employee suffered substantial disability after date as of which his compensation was terminated. Kirtland v. State of Minnesota, Department of Health, Division of Hotel Inspection, 209M537, 297NW23. See Dun. Dig. 10417.

Commission did not abuse its discretion in denying employee's motion for a rehearing as to extent of injuries. Glass v. State Department of Highways, 211M179, 300NW 593. See Dun. Dig. 10421.

A settlement stipulation expressly limiting obligations employee agreed to assume for medical, hospital, and

other items of expense to those "heretofore" incurred, no allowance being made for further medical expenses, would not prevent a rehearing for subsequent development requiring a surgical operation for a spinal injury not previously considered. Leland v. St. Olaf Lutheran Church, 213M34, 4NW(2d)769. See Dun. Dig. 10421.

Order of commission denying claimant's petition for rehearing was reversed though medical testimony was conflicting, on the ground that commission failed to give due significance to findings of the surgeon who performed operation following approval of an award on stipulation. Id.

A petition to vacate findings and award containing a request "to re-open the original hearing for further testimony" was treated as a petition for a rehearing under this section. Id.

It was not the purpose of this section to permit repeated litigation of such issues as are susceptible of best and final decision in the initial hearing, but to permit adjustment of the award in relation to facts subsequently appearing so as to assure a compensation proportionate to the degree and duration of disability. Elsenpeter v. Potvin, 213M129, 5NW(2d)499. See Dun. Dig. 10421.

Where petition to vacate is based upon the subsequent discovery rather than the subsequent development of new facts there is a greater reluctance to grant a rehearing, and in such case evidence must not be merely cumulative. Id.

A large measure of discretion is vested in the commission in the matter of granting rehearings and court will not reverse unless a clear abuse appears. Id.

Petitioner for rehearing must not have been negligent in his efforts to obtain newly discovered evidence earlier, or failing there, his neglect, if any, must be for some reason excusable. Id.

Commission on petition for rehearing had no right to consider evidence in a personal injury action in court as evidenced by a transcript, unless such transcript was properly introduced in evidence. Id.

Commission acted within its discretion in refusing to vacate an award made upon an agreement between the parties, as against claim that employer falsely represented to insurer that deceased was in his employ at the time of death. Id.

"Cause" for setting aside an award means good cause, such as fraud or surprise so that, in the exercise of sound judicial discretion the award should be vacated and a new hearing had. Id.

A finding must be based upon evidence received in the course of the trial, and it is not permissible for trier of fact to obtain or consider other evidence. Id.

Granting a rehearing or a new hearing rests in discretion of industrial commission, and its action is final unless an abuse of discretion clearly appears. Gustafson v. Ziesmer & Vorlander, 213M253, 6NW(2d)452. See Dun. Dig. 10421.

Once the industrial commission has acquired jurisdiction by the filing of a claim petition or the occurrence of any other act constituting a "proceeding", its jurisdiction attaches and continues until it is cut off by judgment or certiorari, and there was a "proceeding" though no formal claim petition was filed within 6 years, where negotiations continued and communications were had between claimant, the commission and city employer, and some money was paid and medical services furnished by the city. Rasmussen v. City of St. Paul, 215M458, 10NW (2d)419. See Dun. Dig. 10419.

4320. Appeal to Supreme Court—Grounds—Fees.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. Husnick v. S., 206M210, 288NW389. See Dun. Dig. 10426.

It is for triers of fact to choose not only between conflicting evidence but also between opposed inferences. Roberts v. R., 206M351, 288NW591. See Dun. Dig. 10426.

A decision should stand, where it is sustained by the facts well found, even though there was error in other findings, which if changed or set aside would not affect the result. Cieluch v. E., 207M1, 290NW302. See Dun. Dig. 1402.

Where claim is made that industrial commission did not consider certain evidence, which was part of transcript in case, and decision of commission recites that it considered transcript, all files, records and proceedings, recitals will be taken as affirmatively showing that evidence was considered. Id. See Dun. Dig. 1402.

Where evidence of causal connection between injury and alleged accident is in conflict, a finding of commission based on competent evidence must be sustained. Schwendig v. A., 207M14, 289NW772. See Dun. Dig. 10426.

Finding of commission that claimant did not suffer a traumatic hernia was one of fact which court cannot disturb if it is justified by evidence and reasonable inferences to be drawn therefrom. Hillman v. N., 207M377, 291NW609. See Dun. Dig. 10426.

Finding of fact by Industrial Commission which is supported by evidence will not be reversed. Gildea v. State, 208M185, 293NW598. See Dun. Dig. 10426.

Where a party to a workmen's compensation proceeding obtains additional time in which to apply for certiorari, writ must be obtained and be served upon both industrial commission and employer and insurance carrier within time so limited, and actual notice does not take place of written notice. Haimila v. O., 208M605, 293 NW599. See Dun. Dig. 10426.

Issue of employment was one of fact upon which finding of commission cannot be disturbed if fairly supported by evidence. Ekrem v. H., 209M337, 296NW180. See Dun. Dig. 10426.

Findings of commission on questions of fact will not be disturbed unless consideration of evidence and permissible inferences require reasonable minds to adopt contrary conclusions. Budd v. C., 209M490, 296NW571. See Dun. Dig. 10426.

Where reasonable inference from credible, uncontradicted evidence permits no other result, order of industrial commission denying an award of compensation will be reversed with direction for an award. Hanson v. Robitshek-Schneider Co., 209M596, 297NW19. See Dun. Dig. 10426.

Order denying additional compensation was reversed because opposed to uncontradicted and seemingly credible testimony showing that injured employee suffered substantial disability after date as of which his compensation was terminated. Kirtland v. State of Minnesota, Department of Health, Division of Hotel Inspection, 209M537, 297NW23. See Dun. Dig. 10426.

Until rehearing granted by commission has culminated in a final decision or order respecting petition for further surgical aid, supreme court on prior review having preserved right to an application for a rehearing, certiorari is untimely. Gildea v. State Department of Highways, 210M402, 298NW453. See 208M185, 293NW598. See Dun. Dig. 10426.

Notwithstanding that question of aggravation of arthritic condition was a medical matter, problem presented was one of fact. Johnson v. Inter-State Iron Co., 210M 468, 299NW1. See Dun. Dig. 10426.

Findings of commission on disputed questions of fact will not be disturbed unless consideration of evidence and permissible inferences therefrom require reasonable minds to adopt contrary conclusions. Johnson v. Crane Co., 210M519, 299NW19. See Dun. Dig. 10426.

Choice between conflicting inferences is for triers of fact. Lunde v. Congoleum-Nairn, 211M487, 1NW(2d)606. See Dun. Dig. 10426.

Supreme court will direct a finding only where there is no dispute in the evidence and the inferences which legitimately may be drawn therefrom, and the finding follows as a conclusion of law. Erickson v. Erickson & Co., 212M119, 2NW(2d)824. See Dun. Dig. 10426.

Weight and credibility of employee's testimony was for the commission. Id.

A finding on conflicting evidence that an accidental injury to an employee arose or did not arise out of and in usual course of his employment will be sustained the same as any other finding on such evidence. Id.

Commission's decision that one was an employee and not an independent contractor must stand if there is any reasonably sufficient evidence tending to support it. Anfinson v. A. O. U. W. Ins. Co., 212M183, 3NW(2d)7. See Dun. Dig. 10426.

Inferences of fact from testimony and surrounding circumstances proved are for commission and not court. Brown v. General Drivers Union, 212M265, 3NW(2d)423. See Dun. Dig. 10426.

It was incumbent upon relators to make the record affirmatively show the facts upon which they relied, and court cannot consider transcript of testimony in a negligence case not shown to have been properly made a part of the record on the petition for a rehearing. Elsenpeter v. Potvin, 213M129, 5NW(2d)499. See Dun. Dig. 10426.

A finding must be based upon evidence received in the course of the trial, and it is not permissible for trier of fact to obtain or consider other evidence. Id.

Findings of fact by the industrial commission must be based upon competent evidence. Id.

A finding of commission reasonably supported by evidence, either by direct testimonial statement or permissible inference from the evidence, is final and must be sustained. Cavilla v. Northern States Power Co., 213M331, 6NW(2d)812. See Dun. Dig. 10426.

A finding reasonably supported by evidence that an employee was employed as a carpenter in connection with employer's building contracting business and not in a dual capacity as such carpenter and as a farm laborer in connection with employer's farming operations is conclusive on review in supreme court. Schroepfer v. Hudson, 214M17, 7NW(2d)336. See Dun. Dig. 10426.

Where there is a conflict in medical testimony as to whether an accident caused an aggravation or acceleration of a disease in existence at time of injury, determination of industrial commission is final unless reasonable minds could not find as it did. Swanson v. American Hoist & Derrick Co., 214M323, 8NW(2d)24. See Dun. Dig. 10426.

On certiorari by employer to review an award of compensation, employee was allowed an attorney's fee in the sum of $100 in addition to the costs and disbursements taxable in the case. Bergstrom v. Brehmer, 214M 326, 8NW(2d)328. See Dun. Dig. 10426.

Findings of industrial commission reasonably sustained by the evidence will not be disturbed on review. Id. See Dun. Dig. 10426.

Positive unimpeached testimony of credible witnesses, which is not inherently improbable or rendered so by facts and circumstances disclosed in the course of the hearing, must be accepted as true by the trier of facts. Haller v. Northern Pump Co., 214M404, 8NW(2d)464. See Dun. Dig. 10426.

It is the duty of court to review the record in the light most favorable to what the statutory fact finding body has determined them to be. Kiley v. Sward-Kemp Drug Co., 214M548, 9NW(2d)237. See Dun. Dig. 10426.

Where there is evidence to show that an employee was injured while doing his work, a finding that the injury arose in the course of the employment must be sustained. Barlau v. Minneapolis-Moline Power Implement Co., 214 M564, 9NW(2d)6. See Dun. Dig. 10426.

Where medical testimony was in conflict as to whether work of employee contributed to heatstroke, a fact question was presented for commission to determine, and its finding cannot be disturbed on review. Nelson v. Creamery Package Mfg. Co., 215M25, 9NW(2d)320. See Dun. Dig. 10426.

A finding of fact by commission cannot be disturbed on review when there is reasonable evidence to sustain it. Id. See Dun. Dig. 10426.

4321. Supreme court to have original jurisdiction.

It is not the province of the court to weigh the testimony or to decide what inferences should be drawn therefrom. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 10426.

Commission's findings being supported by sufficient competent evidence will not be disturbed because some incompetent evidence was received. Id.

Findings of commission supported by evidence are binding upon court, which does not try facts nor determine credibility of testimony of witnesses, be they laymen or medical experts. Schultz v. United States Bedding Co., 210M68, 297NW351. See Dun. Dig. 10426.

Where supreme court affirmed an order terminating compensation with a denial of further surgical aid, but with leave to employee to apply to commission for a rehearing, particularly on his request for additional surgical attention, it was proper for commission to grant application for a rehearing, and in order to do so, to vacate former finding that employee was not in need of surgical treatment. Gildea v. State Department of Highways, 210M402, 298NW453. See 208M185, 293NW598. See Dun. Dig. 10421.

Supreme court cannot consider an assignment that commission erred in refusing to compel claimant to elect upon what theory he would proceed. James v. Peterson, 211M481, 1NW(2d)844. See Dun. Dig. 10426.

Assignments of error against items of award not challenged as erroneous in the brief of relator are considered abandoned. Id.

Order of commission denying claimant's petition for rehearing was reversed though medical testimony was conflicting, on the ground that commission failed to give due significance to findings of the surgeon who performed operation following approval of an award on stipulation. Leland v. St. Olaf Lutheran Church, 213M34, 4NW(2d) 769. See Dun. Dig. 10426.

A large measure of discretion is vested in the commission in the matter of granting rehearing and court will not reverse unless a clear abuse appears. Elsenpeter v. Potvin, 213M129, 5NW(2d)499. See Dun. Dig. 10426.

Where there is no conflict in the evidence or the inferences to be drawn therefrom on the decisive question in the case, supreme court will direct final disposition of the controversy. Kiley v. Sward-Kemp Drug Co., 214M548, 9NW(2d)237. See Dun. Dig. 10426.

4324. Costs—Reimbursements to prevailing party, etc.

Dependent substituted for injured employee was allowed $100 attorney's fee on unsuccessful appeal by employer and insurer. Gustafson v. Ziesmer & Vorlander, 213M253, 6NW(2d)452. See Dun. Dig. 10426.

On certiorari by employer to review an award of compensation, employee was allowed an attorney's fee in the sum of $100 in addition to the costs and disbursements taxable in the case. Bergstrom v. Brehmer, 214M 326, 8NW(2d)328. See Dun. Dig. 10416.

A claimant successful on appeal from an adverse decision was allowed $100 attorney's fees in addition to statutory costs and disbursements. Kiley v. Sward-Kemp Drug Co., 214M548, 9NW(2d)237. See Dun. Dig. 10416.

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

The weekly wage shall be arrived at by multiplying the daily wage by the number of days and fractional days normally worked in the business of the employer for the employment involved; provided that the weekly wage shall not be less than five times the daily wage. Occasional overtime shall not be considered in computing the weekly wage, but if such overtime is regular or frequent throughout the year for the employment involved, then it shall be taken into consideration.

Where board or other allowances of any character except gratuities are made to an employee in addition to wages as a part of the wage contract, they shall be deemed a part of his earnings and computed at the value thereof to the employee. (As amended Act Apr. 28, 1941, c. 512, §1.)

"Weekly wage" of deceased employee correctly computed by multiplying daily wage by six, though deceased had for long been working but one day a week. Ferch v. G., 208M9, 292NW424. See Dun. Dig. 10410.

This statute adopted in Wisconsin was construed as warranting basing of compensation for temporary disability upon actual earnings of a part time employee. Carr's, Inc. v. I., 234Wis466, 292NW1.

Emergency volunteer firemen are entitled to benefits of act though they serve without pay. Op. Atty. Gen. (688P), Jan. 16, 1942.

4326. Definitions, continued.—Throughout this act the following words * * * * * *.

(a) to (g) * * * * * *.

(h) **"Accident"**—The word "accident" as used in the phrases "personal injuries due to accident" or "injuries or death caused by accident" in this act shall, unless a different meaning is clearly indicated by the context, be construed to mean an unexpected or unforeseen event, happening suddenly and violently, with or without human fault, and producing at the time injury to the physical structure of the body, and occupational disease as defined in paragraph (n). (As amended Apr. 24, 1943, c. 632, §2.)

(i) to (m) * * * * * * *.

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

(o) Prior legislative enumerations of occupational disease shall not entitle any employee afflicted with such disease to a presumption that the same is in fact an occupational disease. (As amended Apr. 24, 1943, c. 632, §§2, 3.)

(n). Compensation.

There is a distinction between words "compensation" and "damages" as applied to malpractice of physician. McGough v. M., 206M1, 287NW857. See Dun. Dig. 10415.

"Accrued compensation" includes claims for reimbursement of medical and hospital expenses paid by worker before his death. Fehland v. City of St. Paul, 215M94, 9NW(2d)349. See Dun. Dig. 10410, 10415, 10418c.

(d). Employer.

A demonstrator was employe of a department store though amount equal to her wages was paid to store by company whose goods were being demonstrated. Ekrem v. H., 209M337, 296NW180. See Dun. Dig. 10395.

Where railroad company and wholesale grocery company entered into agreement whereby a checker and trucker employed by railroad performed all of his duties at grocery plant and was required to perform such services as should be required by foreman of grocery plant as well as check freight to be shipped by railroad, railroad to be reimbursed for all wages by grocery company, including social security, it being agreed between railroad and employee that he should remain an employee of railroad with all rights pertaining thereto, checker was employee of railroad alone even while doing work for grocery company. Ryan v. Twin City Wholesale Grocer Co., 210M21, 297NW705. See Dun. Dig. 10395.

Member of partnership is not employer of an employee of partnership as affecting common-law liability of individual partner to employee for negligence. Gleason v. Sing, 210M253, 297NW720. See Dun. Dig. 10395.

Where salesman was employed by two companies to represent them and sell their products and at time of accident was on his way by automobile to demonstrate products of both companies, those of one company at one time and those of the other at another time, relation of employee and employer existed at same time between him and two companies, and employment was concurrent. Rice v. Keystone View Co., 210M227, 297NW841. See Dun. Dig. 10395.

A subcontractor doing hauling on a highway construction project and its general insurer were liable for compensation for death of a truck driver, though contract between subcontractor and principal contractor required latter to pay wages and insurance premiums and it also had a general insurer. Finn v. Phillippi Bros., 211M130, 300NW441. See Dun. Dig. 10395.

Evidence held to sustain finding that lessee of oil station was only an agent or a servant of gas company and that his employee was an employee of gas company. Washel v. Tankar Gas, 211M403, 2NW(2d)43. See Dun. Dig. 10395.

Evidence held to sustain finding of industrial commission that lineman was an employee of electric service company and not of city at time of his death. Toronto v. City of Shakopee, 213M169, 6NW(2d)45. See Dun. Dig. 10395.

State employees working under cooperative agreement with federal government. Op. Atty. Gen. (523g), Nov. 16, 1942.

If independent contractor has no employees working for him, he is not required to carry insurance, since he is not an employer. Op. Atty. Gen., (523E-1), April 18, 1940.

(g). Employee.

Where an employer by means of a scheme or device in form of a lease seeks to evade responsibility under act but its compensation insurer is not a party thereto and has no knowledge thereof, employer is liable for death of one working on leased premises, but compensation insurer is not. Washel v. Tankar Gas, 211M403, 2NW (2d)43. See Dun. Dig. 10395.

Evidence held to sustain finding of industrial commission that lineman was an employee of electric service company and not of city at time of his death. Toronto v. City of Shakopee, 213M169, 6NW(2d)45. See Dun. Dig. 10395.

City council may, in case of a disabled fireman, authorize payment of difference between his salary and compensation received by him under Workmen's Compensation Act for a reasonable period. Op. Atty. Gen. (59a-21), Apr. 18, 1941.

Boys 16 years of age or younger employed by state in forest fire fighting crews are employees of state. Op. Atty. Gen. (523g-3), Feb. 9, 1943.

(g)(1). Public employees.

Evidence held to sustain finding that one employed by town board to remove snow from highways at $1.50 per hour for his services and for use of his truck and plow was an employee and not an independent contractor. Whitted v. T., 207M333, 291NW509. See Dun. Dig. 10395.

Evidence held to sustain finding that superintendent in charge of a W.P.A. project for improvement of a boulevard in a city was an agent of the city in managing trucks and drivers furnished by city and as such had authority to substitute a driver for one who was absent as chairman of grievance committee of union and to create relation of master and servant between city and substitute driver. Bushnell v. C., 209M27, 295NW73. See Dun. Dig. 10395.

Where excavating contractor was given enough work to pay a debt to city and a "little more", city reserving full control as to supervision and termination of work, an employment relationship existed, contractor's helper also became an employee of city. Bolin v. Scheurer, 210 M15, 297NW106. See Dun. Dig. 10395.

A sheriff had authority to engage an aid to accompany him to another state to get a prisoner charged with crime in sheriff's county, and county, having paid aid for services so rendered, is not in a position to question employment and liability for workmen's compensation, even though aid employed was judge of municipal court, and insurer is in no better position than employer to question legality of employment. Sexton v. County of Waseca, 211M422, 1NW(2d)394. See Dun. Dig. 10395.

Township employee working out government relief is within act. Op. Atty. Gen., (523e-2), Jan. 15, 1940.

Fire department pursuant to direction of city council may respond to calls in neighboring state, and firemen responding to call are covered by workmen's compensation law. Op. Atty. Gen., (688a), Jan. 18, 1940.

Employees working out relief furnished them are entitled to benefits of act. Op. Atty. Gen., (523a-17), Jan. 30, 1940.

Law covers volunteer firemen acting within or without village. Op. Atty. Gen., (523E-4), March 15, 1940.

Whether lowest bidder to construct cabins for a city is an employee or an independent contractor is a question of fact. Op. Atty. Gen., (523E-1), April 18, 1940.

President and trustees, street commissioner, village attorney, village health officer, various inspectors and superintendents and registrar of water department held employees entitled to benefit of act in village operating under Laws of 1885. Op. Atty. Gen., (523E-4), April 25, 1940.

Drivers of school busses may be either employees or independent contractors, depending upon terms of contract. Op. Atty. Gen. (523f), Oct. 15, 1940.

Supervisors in cotton mattress program in connection with distribution of surplus cotton are not employees of the state. Op. Atty. Gen., (523g-18), Jan. 14, 1941.

Teachers employed by school district under defense training program have same protection under this law as other teachers. Op. Atty. Gen., (168d), Feb. 17, 1941.

City is not liable for injury to employee of independent contractor hauling gravel for city. Op. Atty. Gen. (844b), Apr. 18, 1941.

Volunteer village firemen servicing fires outside of municipality are covered by Workmen's Compensation Act, including time they are proceeding by quickest route, on foot, or in their own cars, directly to the fire instead of first going to fire station. Op. Atty. Gen. (523e-4), Apr. 22, 1941.

Emergency volunteer firemen are entitled to benefits of act though they serve without pay. Op. Atty. Gen. (688P), Jan. 16, 1942.

If emergency volunteer firemen are appointed prior to commencement of training period, they are covered by act during such training period. Op. Atty. Gen. (688P-4), Mar. 12, 1942.

Boy Scouts serving as volunteer firemen and sworn in as employees of village and receiving a nominal compensation for their efforts come within terms of act. Op. Atty. Gen. (688p), Apr. 16, 1942.

Persons employed to assist county engineer, executive secretary of county welfare board, supervisor of child welfare, are covered by insurance policy, but county highway engineer, members of county welfare board, and members of county board, are not covered, since they are elected for definite terms. Op. Atty. Gen. (523c), Apr. 17, 1942.

County agricultural agent, county home demonstration agent, and an office assistant are employees of the United States and not of the county, and their salaries should not be included in payroll upon which county compensation insurance policy premium is based. Id.

Where a county contracted with city public library and agreed to pay salary of a competent librarian, whether librarian is employee of city or county is question of fact. Op. Atty. Gen. (285c, 523c), July 13, 1942.

Whether librarian paid by county under contract with city is an employee of the city or the county is a question of fact. Op. Atty. Gen. (285c, 523c), July 17, 1942.

Children under 16 fighting forest fires. Op. Atty. Gen. (523g-3), May 24, 1943.

For purpose of workmen's compensation insurance, school districts should consider bus drivers as employees rather than independent contractors. Op. Atty. Gen. (523f), Oct. 28, 1943.

(g)(2). Private employees.

In determining whether relationship is one of employee or independent contractor, most important factor is right of employer to control means and manner of performance, and other facts to be considered are mode of payment, furnishing of materials or tools, control of premises where work is done, and right of employer to discharge employee-contractor. Lemkuhl v. C., 209M276, 296NW28. See Dun. Dig. 10395.

Evidence that decedent was hired and paid by employee to assist him in performing work for his employer with latter's consent and subject to his control as to details of work supports finding that decedent was employee of employer. Byhardt v. B., 209M391, 296NW504. See Dun. Dig. 10395.

Informality and indefiniteness of agreement is some evidence of an "employer-employee relationship", rather than that of an independent contractor. Anfinson v. A. O. U. W. Ins. Co., 212M183, 3NW(2d)7. See Dun. Dig. 10395.

Evidence held to sustain finding that owner of a stationary sawmill, who was killed while sawing logs for insurance company on land owned by it, was an employee of company Id.

Evidence sustained finding that housekeeper was an employee of church rather than priest whom she served as such. Berger v. Church of St. Patrick, 212M345, 3NW (2d)590. See Dun. Dig. 10395.

A person may engage in different kinds of business, some of which are within act and some of which are not,

and employees in business within act are covered, and employees in business not within act are not covered. Schroepfer v. Hudson, 214M17, 7NW(2d)336. See Dun. Dig. 10394.

——Independent contractors.

One employed to cut indefinite amount of cord wood, employer retaining complete right of control, is not an independent contractor. Stahl v. P., 206M413, 288NW 854. See Dun. Dig. 10395.

Right of control is an important factor in determining whether relationship existing is one of employment or independent contract. Whitted v. T., 207M333, 291NW 509. See Dun. Dig. 10395.

Evidence held to sustain finding that one removing screens and washing and putting on storm windows at a certain price per window, was an employee and not an independent contractor. Fisher v. M., 208M410, 294NW 477. See Dun. Dig. 10395.

Evidence held to warrant finding that the persons painting a grain elevator were independent contractors. Lemkuhl v. C., 209M276, 296NW28. See Dun. Dig. 10395.

One operating "cook truck" for a general contractor on highway work, under a contract to endure "for the summer", and therefore obligated to furnish all work and supplies and to take profits or suffer losses, with no right of control reserved by owner, was an independent contractor, and one working for her as cook's "flunkey" was her employee and not in service of owner. Curtis v. H., 209M396, 296NW495. See Dun. Dig. 10395.

A servant is one who is employed to perform a service in which he is subject to employer's control as to details of work, while an independent contractor undertakes to do a specific piece of work for another without submitting himself to such party's control as to details and binds himself only as to results. Byhardt v. B., 209M391, 296NW504. See Dun. Dig. 10395.

Fact that one employed to do work employs helpers and pays them wages does not, ipso facto, make him an independent contractor, nor can mere right of a helper to receive wages operate to bar his assertion of an employment relationship beetween himself and his employer's employer. Bolin v. Scheurer, 210M15, 297NW106. See Dun. Dig. 10395.

It is the right of control or interference with performance which is determinative of existence of employment relationship, and absence of a detailed exercise of right is not conclusive. Id.

Most important element in determining whether person is employee or an independent contractor is control which alleged employer has or exercises over manner and means of performance. Rice v. Keystone View Co., 210M227, 297NW841. See Dun. Dig. 10395.

A "dealership" arrangement requiring salesman to promote exclusively the sale of products, contact prospective customers whose names were forwarded, answer all correspondence pertaining to business, and report regularly activities of competitors, created relationship of employment and not independent contractor was warranted. Id.

A subcontractor doing hauling on a highway construction project and its general insurer were liable for compensation for death of a truck driver, though contract between subcontractor and principal contractor required latter to pay wages and insurance premiums and it also had a general insurer. Finn v. Phillippi Bros., 211M130, 300NW441. See Dun. Dig. 10395.

Owner of a stationary sawmill sawing logs on land of another at a specified rate per thousand feet of lumber was an independent contractor unless one engaging him had right of control characteristic of employer-employee relationship, right to control the manner and means of performance. Anfinson v. A. O. U. W. Ins. Co., 212M183, 3NW(2d)7. See Dun. Dig. 10395.

In determining whether one was an employee or an independent contractor, it must be remembered that manner and means as opposed to results necessarily vary in kind and degree with each fact situation. Id.

An unrestricted right of discharge afforded means for controlling work, as affecting question whether work was being done as an independent contractor. Id.

In determining whether relationship is one of employee or independent contractor, most important factor is right of employer to control means and manner of performance, though other factors to be considered are mode of payment, furnishing of materials or tools, control of the premises where the work is to be done, and right of employer to discharge employee-contractor. Bergstrom v. Brehmer, 214M326, 8NW(2d)328. See Dun. Dig. 10395.

Evidence held to sustain finding of employer-employee relationship where house contractor employed men to do shingling at so much per square. Id. See Dun. Dig. 10395.

Evidence that injured employee who was helper of another employee assisting him in performing work for employer with employer's consent and subject to employer's control as to means and manner of performance of the work supported finding that an employer-employee relationship existed. Id. See Dun. Dig. 10395.

——Casual employment.

See also notes under §4272-4.

"Casual" relates to employment which is not permanent or periodically regular but occasional or by chance and not in the usual course of employer's trade or business. Berry v. A., (CCA4), 114F(2d)255.

Tearing down a small shed on a lot belonging to estate of a decedent under employment of an executor was casual and not in usual course of any trade, business, profession, or occupation of owner or executors. Happel v. F., 206M513, 289NW43. See Dun. Dig. 10394.

A regular employee hired on a part time basis is not excluded from the benefits of act upon ground that his injury did not occur in usual course of employer's business, trade, occupation or profession. Chisholm v. D., 207M614, 292NW268. See Dun. Dig. 10394.

To take owners of apartment building outside the Act, evidence must show that employment was not in usual course of trade, business, profession or occupation of employer, and it is immaterial that employment was casual. Fisher v. M., 208M410, 294NW477. See Dun. Dig. 10394.

An employment must be both casual and not in usual course of employer's business to take it out of statute where such grounds are relied on. Byhardt v. B., 209M319, 296NW504. See also §4272-4. See Dun. Dig. 10394.

(h). Accidental injuries.

Amended. Laws 1943, c. 633. See above text.

Evidence sustains finding that, subsequent to date of accidental injury for which compensation was awarded, relator became afflicted from natural causes and diseases which rendered arm permanently partially disabled. Rehak v. S., 206M96, 288NW22. See Dun. Dig. 10406.

Evidence held to sustain finding that disability of thumb was result of a diseased condition and was neither caused nor aggravated by accident. Husnick v. S., 206M 210, 288NW389. See Dun. Dig. 10406.

Evidence held to sustain finding that intermittent temporary total disability resulted from original sprained back. Paul v. T., 206M74, 287NW856. See Dun. Dig. 10406.

Evidence held to sustain finding that employee with a sprained back sustained a wage loss, though he worked intermittently for others following accident. Id.

Question is not whether cause of accident is referable to a tortious or a blameless act, or whether if tortious employer or some third person is blameworthy, or even that employee is at fault if not willfully so. McGough v. M., 206M1, 287NW857. See Dun. Dig. 10396.

Malpracticing physician is not liable for original injury, and while his services are called in to play because thereof, his liability arises solely because of his own fault, later occurring, and has for its basis, not contract, but tort. Id. See Dun. Dig. 10408.

Evidence held to sustain finding of no causal connection between accident and hernia. Schwendig v. A., 207 M14, 289NW772. See Dun. Dig. 10406.

Evidence held to sustain implied finding that loss of vision was not caused by subdural hemorrhage sustained as a result of injury, a "subdural hemorrhage" occurring intracranially in front of optic chiasm where optic nerve passes out of skull to eye, and effect of which is to compress optic nerve so as to ultimately cause atrophy and blindness. Cieluch v. E., 207M1, 290NW302. See Dun. Dig. 10406.

Finding that relator did not suffer a traumatic hernia held sustained by record. Hillman v. N., 207M377, 291NW 609. See Dun. Dig. 10406.

Evidence held to sustain finding that death by extravasation of blood into media of aorta artery resulted from carrying a large sack of sugar in course of employment. Ferch v. G., 208M9, 292NW424. See Dun. Dig. 10406.

Evidence held to raise question for jury on question whether underground miner contracted Pneum oconiosis or silicosis in defendant's mines and thereby became afflicted with an aggravation of existing tuberculosis. Applequist v. O., 209M230, 296NW13. See Dun. Dig. 10397.

If an unforeseen accident to employee while engaged in performance of his work directly causes an injury to physical structure of his body, it is compensable even though employee had a natural weakness predisposing him to such an injury. Stenberg v. R., 209M366, 296NW 498. See Dun. Dig. 10397.

Whether employee falling and striking his head against leg of an adding machine died as result of a head injury or from heart failure presented purely a fact issue for commission. Id. See Dun. Dig. 10406.

Evidence held to sustain finding that death resulted from bronchopneumonia, superimposed upon shock of operation for cancer of stomach, and not from accidental fracture of ribs. Schultz v. United States Bedding Co., 210M68, 297NW351. See Dun. Dig. 10406.

Evidence held to conclusively etsablish that employee who fell 76 feet when building collapsed was suffering from traumatic neurosis which materially impaired his earning power and entitled him to additional compensation. though there was a complete recovery as far as fractures were concerned. Soderquist v. McGough Bros., 210M123, 297NW565. See Dun. Dig. 10406.

Evidence held to sustain finding that injury from a fall aggravated arthritic condition for a period of 52 weeks. Johnson v. Inter-State Iron Co., 210M468, 299NW1. See Dun. Dig. 10397.

Evidence that an employee sustained injury to a heart muscle by overexertion sustains finding of accidental injury. Brown v. Minneapolis Board of Fire Underwriters, 210M529, 299NW14. See Dun. Dig. 10396.

"Accident" did not cover fatal disease within coverage of employer's liability policy. Golden v. Lerch Bros., 211 M30, 300NW207. See Dun. Dig. 4867.

Where legal cause and its harmful effects have been shown by competent evidence, liability follows although other causes may have lent their aid. Kvernstoen v. Nelson, 212M102, 2NW(2d)560. See Dun. Dig. 10397.

In case of an accident causing an actual aggravation or acceleration of an existing disease, necessary element is that accidental injury actually contributed to the present disability. Swanson v. American Hoist & Derrick Co., 214M323, 8NW(2d)24. See Dun. Dig. 10397.

An accident causing an actual aggravation or acceleration of an existing disease is compensable. Id.

Evidence held to warrant finding that a fall on the head caused an aggravation or acceleration of diffuse degenerative process involving brain. Swanson v. American Hoist & Derrick Co., 214M323, 8NW(2d)24. See Dun. Dig. 10406.

An actual aggravation of an existing infirmity by reason of accident occurring in the course of employment is compensable, even though a normal person might not have sustained disability as a result of the accident, and this applies to aggravation of an existing hernia. Haller v. Northern Pump Co., 214M404, 8NW(2d)464. See Dun. Dig. 10397.

An accidental injury to an employee while doing his work, caused by falling because of an epileptic seizure, arises out of the employment, adhering to the rule of Stenberg v. Raymond Co-Op Creamery Co., 209M366, 296NW 498. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10396.

Heatstroke resulting solely from some natural risk is not compensable, but where the employment is such that it accentuates the natural risk, it is compensable. Nelson v. Creamery Package Mfg. Co., 215M25, 9NW(2d)320. See Dun. Dig. 10396.

It is not necessary that employee be exposed to risks greater than other employees in the same or similar employment in order to be entitled to compensation. Id. See Dun. Dig. 10396.

Fact that heatstroke came to employee while at his usual work did not prevent recovery of compensation. Id. See Dun. Dig. 10396, 10403.

(j). Injuries out of and in course of employment.

Relationship of employer-employee must exist and be in force at time occurrence of accident before liability can attach to employer, injury must arise out of and in course of employment. Roberts v. R., 206M351, 288NW 591. See Dun. Dig. 10403.

Evidence held to sustain finding that traveling salesman injured in a fall in a hotel did not receive injury arising out of and in course of his employment. Id. See Dun. Dig. 10405.

If work of an employee creates necessity for travel, he is in course of his employment, although he is serving at same time some purpose of his own, but if work had no material part in creating the necessity of travel, then travel is personal and so is the risk. Lindell v. M., 208M415, 294NW416. See Dun. Dig. 10403.

Circulation and advertising manager of American Legion Publishing Company was in the course of his employment while traveling in his automobile to make a speech at an armistice day program in answer to a request for a speaker by a local post. Id. See Dun. Dig. 10404.

In action to determine obligation of automobile liability insurer to defend an action by a boy employed by insured to weed an onion patch and who rode in insured vehicle to the patch, evidence held to sustain finding that boy was not an employee of the insured nor engaged in his business at time and place of accident. State Farm Mut. Auto Ins. Co. v. S., 208M443, 294NW413. See Dun. Dig. 10405.

Term "arising out of" employment points to origin or cause of injury, and determination of origin or cause requires a finding of proximate cause. Stenberg v. R., 209 M366, 296NW498. See Dun. Dig. 10403.

Evidence held to sustain finding that death of employee resulted from a fall and that fall was an accident in course of employment and not merely result of heart disease. Id. See Dun. Dig. 10406.

An injury is regarded as arising out of and in the usual course of employment where employment exposes employee in special degree to risk of injury. Byhardt v. B., 209M391, 296NW504. See Dun. Dig. 10403.

An injury occurring to an employee while engaged in moving office furniture, equipment and safe of a realtor from one office to another arises out of and in usual course of employer's business. Id. See Dun. Dig. 10404.

Where store manager suffered sudden pain in knee when stooping to pick up a piece of paper and it was discovered on examination that cartilage was torn, whether injury arose out of employment was question of fact for commission. Budd v. C., 209M490, 296NW571. See Dun. Dig. 10406.

Finding that organizer for a labor organization, shot and killed by an unknown person after 10 p. m. while on the way from his garage to his house, died as result of injuries arising out of and in course of his employment, held sustained by evidence. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 10402.

If employment brings worker into contact with a rough class of people and he is injured thereby, such injury may be compensable. Id.

In order to hold that injury arises out of employment it is necessary that it flow naturally from a hazard or a special risk connected with employment. Id. See Dun. Dig. 10403.

Where traveling salesman in course of his employment was at employer's plant at the night time in an area standing high in homicide and robbery, and claimant for compensation showed probable absence of "reasons personal" to victim, claimant made a prima facie case on that issue which should prevail with no evidence against it, though burden of proof was on such claimant and did not shift. Hanson v. Robitshek-Schneider Co., 209M 596, 297NW19. See Dun. Dig. 10406.

That injury is intentionally inflicted by a third person does not ipso facto preclude compensation, as where employment subjects employee in course of his employment to a special hazard of robbery and assault is committed with that motive. Id. See Dun. Dig. 10402.

Words "in the course of" imposes a requirement in respect to time and place, and phrase "out of" expresses a factor of source or contribution rather than cause in sense of being proximate or direct. Id. See Dun. Dig. 10403.

Workmen's compensation law impliedly rejects or at least modifies the standard of proximate causation determinative in tort litigation. Id. See Dun. Dig. 10403.

Finding that accidental injuries sustained by city park worker employed to sprinkle greens on golf course, during lunch period in the middle of the night while on way from a pavilion in park to a toilet, arose out of and during course of his employment held supported by evidence. Sudeith v. City of St. Paul, 210M321, 298NW46. See Dun. Dig. 10404.

An injury to a salesman resulting from a collision between a train and an automobile furnished by employer for purpose of employment, which he is driving at time, occurs in course of his employment, where employment created necessity for such travel, though accident occurred at 1 a. m. and he may have previously departed from his employment for a time. Johnson v. Crane Co., 210M519, 299NW19. See Dun. Dig. 10404.

Factors of time and place are not decisive when injury occurred in the course of employment, real determinant being employee's activity of the moment. Lunde v. Congoleum-Nairn, 211M487, 1NW(2d)606. See Dun. Dig. 10403.

Accident to traveling salesman occurring in evening during which he expected to take a train, after his day's work, and while he was on a personal errand, is not compensable as matter of law. Id. See Dun. Dig. 10405.

That a traveling salesman is within his own "territory" does not bring all his actions away from home within compensation act. Id. See Dun. Dig. 10403.

Finding that caretaker of summer resort was acting in course of his employment while assisting a third person in cutting ice and filling ice house of a neighbor of his employer, and in employing third person for ice cutting, held sustained by evidence. James v. Peterson, 211M481, 1NW(2d)844. See Dun. Dig. 10395.

Where employee's work creates necessity for travel, whether it be for dual purposes of employer and employee or solely for purpose of employer, such travel and its incidental risks are in course of employment, but not otherwise. Erickson v. Erickson & Co., 212M119, 2NW(2d)824. See Dun. Dig. 10403.

An employee leaving his home to travel to a certain point in performance of his employer's business was not in course of his employment on his return trip when he drove aside to pick up a guest. Id. See Dun. Dig. 10405.

In proceeding for compensation for death of president and organizer of a truck drivers union, who was found dead in an automobile from bullet wounds, issue being whether death arose out of and in course of employment, court rightly excluded as hearsay and irrelevant a magazine article issued two months before death and headed "Marked for death * * * another labor leader, who was marked for death but escaped". Brown v. General Drivers Union, 212M265, 3NW(2d)423. See Dun. Dig. 10402.

Employment as president and organizer of a truck drivers union was an extrahazardous occupation during a time of strikes and strife, but that does not establish that death of employee from a bullet wound arose out of and in course of employment. Id.

Phrase "caused by accident arising out of and in the course of employment" in Mason's St., §4272-1, should be construed in connection with §4326(j), providing that act shall not include injury caused by act of third person or fellow employee intended to injure employee because of reasons personal to him and not directed against him as an employee. Id. See Dun. Dig. 10403.

Evidence sustained finding that accident sustained by housekeeper as she was returning to parish house arose out of and in course of her employment by church. Berger v. Church of St. Patrick, 212M345, 3NW(2d)590. See Dun. Dig. 10404.

Travel to and from work by an employee may be an incident of the employment where contract of employment provides, expressly or by necessary implication, that the employment shall begin when the employee leaves his home to go to work and shall end when he returns to it. Cavilla v. Northern States Power Co., 213M331, 6NW(2d) 812. See Dun. Dig. 10403.

Fact that employer made an additional daily allowance to employees on a job away from home, including Saturday and Sunday, did not entitle an employee to compensation for injuries received while traveling to and from home on week-end. Id. See Dun. Dig. 10405.

Week-end trips were not made an incident of the employment by custom because employer knew that employees took such trips home and consented to an ar-

rangement of working hours during the week, with the approval of the union's steward, to enable the employees to start on such trips earlier than the regular quitting hour. Id.

Where an employer's services are required to be performed away from home at a specified place and during specified hours, an accidental injury occurring to employee while engaged on a week-end trip to his home after completion of the week's work and while he is not performing a service by direction of his employer, does not arise out of and in the course of the employment. Id.

Where an employer regularly furnishes transportation for his employe, it is immaterial whether it be by a public or private conveyance. Radermacher v. St. Paul City Ry. Co., 214M427, 8NW(2d)466, 145ALR1027. See Dun. Dig. 10403.

Employe's situation is no different where injury occurs during transportation furnished by employer as an incident of the employment from that where an injury occurs on the employer's premises, or at a place where the employe's services require his presence. Id. See Dun. Dig. 10403.

Where street car company furnished car barn employee a book of 100 tickets each 30 days entitling employee to that many free rides, the employer regularly furnishes transportation and such employee hit by an automobile while standing in a safety aisle while waiting for a street car to carry him to the car barn was "being so transported", and was entitled to compensation. Id. See Dun. Dig. 10404.

Where as an incident to the employment it is contemplated and understood by both employer and employe that the former will transport the latter to or from the place where the work is done, an accidental injury to the employe while thus being transported arises out of and in the course of the employment, and there need be no formal contract between employe and employer that transportation will be furnished, it being enough that employer regularly furnishes the transportation and that the employe makes use of it. Id. See Dun. Dig. 10403.

Accident arose out of the employment if there was a causal connection between the employment and the injury, and by "causal connection" is meant not proximate cause as that term is used in the law of negligence, but cause in the sense that the accident had its origin in the hazards to which the employment exposed the employee while doing his work. Barlau v. Minneapolis-Moline Power Implement Co., 214M564, 9NW(2d)6. See Dun. Dig. 10403.

Where employee in charge of cosmetic department of drug store was directed to go to a comestic show in a distant city without any instructions as to route or means of travel, a ride with her brother and his fiancee was entirely permissible, even though it deviated from the direct route. Kiley v. Sward-Kemp Drug Co., 214M548, 9NW(2d)237. See Dun. Dig. 10404.

Fact that it was cooler where employee worked than on the outside and it was not shown that ventilation was poor or that employment did not subject employee to greater exposure than that to which persons generally in that locality were exposed, did not prevent a finding that heatstroke and death arose out of employment. Nelson v. Creamery Package Mfg. Co., 215M25, 9NW(2d)320. See Dun. Dig. 10403.

Where the employment is such that it accentuates the natural risk which is connected with and reasonably incidental to the employment as distinguished from the ordinary risk to which the general public is exposed from climatic conditions, an injury arises "out of the employment" and is compensable. Id. See Dun. Dig. 10403.

Death from heatstroke suffered while engaged in the rapid mechanical operation of sanding butter tubs arose "out of the employment". Id. See Dun. Dig. 10404.

Volunteer village firemen servicing fires outside of municipality are covered by Workmen's Compensation Act, including time they are proceeding by quickest route, on foot, or in their own cars, directly to the fire instead of first going to fire station. Op. Atty. Gen. (523e-4), Apr. 22, 1941.

——Injuries occurring in another state.

Severson v. H., (CCA8), 105F(2d)622. Cert. den., 60SCR 514.

Where a business is localized in this state, an employee performing services pertaining to that business is within protection of compensation law although some of his services may be performed and an accident to him may have occurred outside state. Rice v. Keystone View Co., 210M227, 297NW841. See Dun. Dig. 10387.

(m) Farm laborers and commercial threshermen and balers.

Nature of employment taken as a whole is test as to whether an employee is a farm laborer, and a farmer with considerable equipment who did the work for others with his machine and hired man for the purpose was not engaged in a commercial enterprise, and his employee was a farm laborer. Partridge v. Blackbird, 213M 228, 6NW(2d)250. See Dun. Dig. 10394.

(n).

Added. Laws 1943, c. 633. See above text.

4327. Occupational diseases—How regarded—Disability—Disablement.—Subdivision 1. The disablement of an employee resulting from an occupational disease, except where specifically otherwise provided, is to be treated as the happening of an accident within the meaning of the workmen's Compensation Law and the procedure and practice provided applies to all proceedings under this section, except where specifically otherwise provided herein. When used in this section, "disability" means the state of being disabled from earning full wages at the work at which the employee was last employed and "disablement" means the act of becoming so disabled.

Subdivision 2. **Disability or death caused by disease.**—If an employee is disabled or dies and his disability or death is caused by a compensable occupational disease, he or his dependents are entitled to compensation for his death or for the duration of his disability according to the provisions of this act, except as otherwise provided in this act. If it be determined that such employee is able to earn wages at another occupation which is not unhealthful or injurious and such wages do not equal his full wages prior to the date of his disablement, the compensation payable is to be 66⅔ per cent of the difference between the daily wage of the workman at the time of disablement and the daily wage he is able to earn in his partially disabled condition, continuing for a period of not longer than 25 weeks.

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

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

Subdivision 5. **Apportionment of compensation recoverable.**—The total compensation due for occupational disease is recoverable from the employer who last employed the employee in the employment to the nature of which the disease was due and in which it was contracted. If such disease was contracted while such employee was in the employment of a prior employer, the employer who is made liable for the total compensation, as provided by this subdivision may appeal to the commission for an apportionment of such compensation among the several employers who, since the contraction of such disease, employed such employee in the employment to the nature of which such disease was due. Such apportionment is to be proportioned to the time such employee was employed in the service of such employers provided, that if a prior employer has met the requirement as to minimum standards herein provided for and has been certified by the Industrial Commission to that effect, that then the commission shall take into consideration in the apportionment of such liability not only the period of service of said employee with such employer, but shall likewise consider the element of exposure to which the employee was subjected while in the service of such employer maintaining minimum standards, and the apportionment determined only after a hearing, notice of the time and place of which is to be given to each employer alleged to be liable for any portion of such compensation. If the commission find that any portion of such compensation is payable by an employer prior to the employer who is made liable to the total compensation, as provided by this subdivision, it shall make an award accordingly in favor of the last employer, which may be enforced in the same manner as an award for compensation.

Subdivision 6. **Notice of death or disability—To whom given.**—The employer to whom notice of death

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

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

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

Subdivision 9. **Provisions not retroactive.**—The provisions of this act do not apply to disability or death resulting from a disease contracted prior to the date on which this act takes effect, unless such disease is determined to be an occupational disease under the terms of this act and was compensable at the time it was contracted or in cases of silicosis or asbestosis as herein provided. (As amended Apr. 24, 1943, c. 633, §3.)

Mason's Minn. Stat. 1927, §4327(8), repealed. Laws 1943, c. 633, §5. Subdivision (10) renumbered (8) and amended. Laws 1943, c. 633, §3.

Mason's Minn. Stat. 1940, §4327(9), as amended by Laws 1939, c. 306, is repealed by Laws 1943, c. 633, §6. Subdivision (9) renumbered (11) and amended Laws 1943, c. 633, §3.

Fatal disease of employee slowly developing by reason of improper ventilation, such as silicosis and pneumoconiosis with super-imposed tuberculosis, is not sustained by reason of "accident" within coverage of employer's liability policies, and employer who paid judgment and garnished insurers cannot recover indemnity, such judgment having been entered in tort action for negligence, though part of policy covered workmen's compensation liability. Golden v. Lerch Bros., 211M30, 300NW207. See Dun. Dig. 4867.

Evidence supported finding that coronary sclerosis from which city fireman died was due to nature of employment and contracted therein. Kellerman v. City of St. Paul, 211M351, 1NW(2d)378. See Dun. Dig. 10398.

Coronary sclerosis is "contracted" when it first manifests itself so as to interfere with functions of body. Id.

Laws 1939, c. 306, making coronary sclerosis an occupational disease of municipal firemen, is not unconstitutional as special or class legislation. Id.

As against objection as to insufficiency of finding that employee's disease "was due to contacting mercury and/or wood alcohol poisoning" because "mercury and/or wood alcohol poisoning" was not found, facts found held inevitably to lead to conclusion that employee suffered such poisoning. Kvernstoen v. Nelson, 212M102, 2NW(2d) 560. See Dun. Dig. 10421.

Where legal cause and its harmful effects have been shown by competent evidence, liability follows although other causes may have lent their aid. Id. See Dun. Dig. 10397.

(9).

Evidence sustains finding of disability arising out of and in course of his employment by reason of becoming afflicted with an occupational disease of phosphorus poisoning. Malzac v. S., 206M430, 288NW837. See Dun. Dig. 10398.

4327-2. Occupational disease aggravated by other disease or infirmity.—Where an occupational disease is aggravated by any other disease or infirmity, not itself compensable, or where disease or death from any other cause, not itself compensable, is aggravated, prolonged, accelerated, or contributed to by an occupational disease, the percentage of such contribution to be determined by the Medical Board, the compensation payable is to be reduced and limited to such proportion only of the compensation that would be payable if the occupational disease were the sole cause of disease or death, as such occupational disease, as a causative factor, bears to all the causes of such disease or death. No compensation shall be payable for occupational disease where the employee refuses or wilfully fails to use standard safety appliances, ordered and provided for his protection and use, and approved by the commission, or who wilfully refuses to obey reasonable rules prescribed, printed and posted by the commission for the conduct of the work or to perform a statutory duty. Failure of an employer to maintain minimum standards of safety and healthful working conditions as provided by the orders of the commission, or to post and order compliance with all reasonable rules prescribed and ordered by the commission for the conduct of the particular work shall constitute a violation of Mason's Minnesota Statutes of 1927, Section 4160. The commission shall each year certify any place of employment which has complied with the minimum standards for healthful working conditions as prescribed by the commission. (Act Apr. 24, 1943, c. 633, §7.)
[176.661]

4327-3. Evidence—Presumptions.—In the absence of conclusive evidence in favor of an employee's or a dependent's claim of disability or death from silicosis or asbestosis it shall be presumed not to be due to the nature of any occupation or employment within this act unless during the ten years immediately preceding the date of disablement the employee shall have been exposed to the inhalation of silica dust or asbestos dust over a period of not less than five years, the last three years of which exposure shall have been in this state.

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

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

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

section attach and begin at the termination of such period of compensable disability and constitute additional benefits. In the event retraining of the employee is undertaken during the period of such partial disability compensation is not to continue beyond 25 weeks from the date when such retraining is begun.

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

An employee so removed from employment is entitled to compensation for disability, or his dependents to compensation for his death, from occupational disease, if such disablement of the employee occurs within three years, in case of silicosis or asbestosis, or within one year, in case of other occupational diseases, from the date of such employee's last exposure to the hazards of such occupational disease prior to such removal. (Act Apr. 24, 1943, c. 633, §8.)
[176.662]

4327-4. Employee may waive full compensation.— Subject to the approval of the commission on recommendation of the medical board, an employee affected by occupational disease, as an alternative to a forced change of occupation, may waive, in writing, full compensation for any aggravation of his condition resulting from his continuing in hazardous employment. A waiver so permitted shall remain effective for the trade, occupation, process or employment for which executed, notwithstanding a change or changes of employer. In such cases compensation and medical benefits for later resulting disability or death from such disease is not to continue beyond 100 weeks. (Act Apr. 24, 1943, c. 633, §9.)
[176.663]

4327-5. Must serve notice within 90 days.—Any claim for occupational disease is barred unless within 90 days after disablement of an employee as defined in Section 4327, subdivision 1, notice thereof in accordance with Section 4280 shall have been given to the employer, and unless the claim is filed with the commission within one year after the date of the employee's last exposure or within one year after the date of the last payment of compensation by the employer, or default in payment of compensation for occupational disease, except that in case of silicosis or asbestosis the claim may be filed with the commission within three years after the date of employee's last exposure or within three years of the date of the last payment of compensation by the employer, or his default in payment. If disablement occurs within the last 90 days allowed by this section for filing claim with the commission, then the employee or his dependents shall be allowed a period of 90 days from the happening of such disablement to comply with the provisions of this section.

Compensation is not payable for partial disability from silicosis or asbestosis, except where such partial disability follows a compensable period of total disability. After the effective date of this act, in the event of total disability or death from silicosis or asbestosis, compensation is to be paid during a transition period according to the following formula: if such total disability or death results during the first calendar month after the effective date of this act, the total compensation payable for such disability or death, or both shall not exceed $500.00; thereafter, the limit on the total compensation payable for total disability or death increases at the rate of $50.00 per month, in each case such total is limited, pursuant to such formula, according to the month in which incapacity or death occurs. The liability of the employer to furnish medical benefits to the employee does not continue beyond the date when the last compensation is payable pursuant to such formula. Such progressive increase in the limits to the aggregate compensation and benefits for disability or death continues until the limits upon such benefits, as provided in the Workmen's Compensation Act, is reached. (Act Apr. 24, 1943, c. 633, §10.)
[176.664]

4327-6. Hearings — Evidence — Findings. — Upon the filing with the commission of a claim petition by an employee or his dependents, claiming and demanding compensation and benefits as for occupational disease, if such claim petition and the answer thereto, filed with the commission, presents or raises a controverted medical question and in addition other questions of liability, the commissioner shall first cause the petition and answer to be heard by the commission, a commissioner or referee, according to established practice, and permit all interested parties an opportunity to produce evidence relating to any issue involved except the controverted medical question; as to such question each party to the proceeding shall be permitted to take the testimony of one physician. Upon the completion of the taking of such evidence, the commission, commissioner or referee shall make findings of fact and conclusions of law on all issues involved excepting that of occupational disease. If such findings of fact and conclusions of law are adverse to the claim of the petitioner and the claim denied, there shall be an end to the matter, except as to such further proceeding as may be had by the aggrieved party in the exercise of his right of appeal. If such finding and conclusion are in favor of the petitioner or if no questions other than that of occupational disease is presented by the pleadings, the commission, commissioner or referee shall forthwith appoint a medical board of three doctors of medicine selected from a panel of fifteen nominees chosen by the Dean of the College of Medicine of the University of Minnesota, the Council of the Minnesota State Medical Association and the Governor of Minnesota. Ten of these nominees shall be doctors of medicine with at least five years' experience in the diagnosis, treatment and care of industrial diseases, and five of these nominees shall be doctors of medicine with at least five years' specialization in the field of X-ray diagnosis and treatment. The medical board shall be appointed in the following manner: The commission shall furnish to each party to the proceeding a copy of the panel of doctors, together with a request that each party select one doctor of medicine from said panel and that the two doctors of medicine so selected shall choose a third doctor of medicine to constitute the medical board. The three doctors of medicine so agreed upon shall be appointed by the commission as the medical board. If within ten days after such request the parties to the proceeding fail to make their individual selections from the panel, or the two doctors of medicine thus selected fail to agree upon a third to be chosen, the commission, commissioner or referee shall forthwith appoint such additional number of doctors of medicine from said panel as may be necessary to constitute a medical board of three members.

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

The medical board may examine the employee, including X-ray examinations, hear and examine wit-

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

The medical board shall, immediately after the conclusion of such examinations and hearings, file its findings and conclusions with the commission, signed by all the members of said board participating. If any member fails to sign the report of the board he shall state in writing to the commission his reasons therefor. The report of the medical board shall include the names of the doctors who appeared at such examinations and hearings and such medical reports and exhibits as were considered by it. The findings and conclusions of the medical board, in so far as the same concern such controverted medical questions, shall be adopted by the commission as its decision on such questions. (Act Apr. 24, 1943, c. 633, §11.)
[176.665]

4327-7. Investigations.—When it appears to the medical board or to the state board of health that conditions exist which require investigation in order to determine the advisability of allowing or permitting an employee to continue in his hazardous employment, it shall file with the commission a petition demanding that the commission proceed to make such investigation, which may include examinations by a member of the medical board and the holding of such hearings as may be necessary to such determination. Such investigation may also be initiated by the commission, or by petition of any employee or employer. The commission shall proceed promptly, after the filing of such petition or upon its own motion, with such investigation. (Act Apr. 24, 1943, c. 633, §12.)
[176.666]

4327-8. Employees to submit to medical examination.—Each employee, hereafter entering the service of an employer whose business is one in which the hazard of silicosis or asbestosis is involved who will be exposed to such hazard because of such employment, shall at the request of the employer, submit to a medical examination for the purpose of determining whether such employee can safely be employed in such hazardous employment. The cost of such medical examination shall be borne by the employer.

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

Upon the termination of an employee's service the employer may request employee to submit to a final medical examination by giving the employee leaving his service ten (10) days' notice in writing of the time and place that the medical examination is to be made, which notice may be delivered to such employee personally or mailed to his last known address. Any employee who wilfully fails or refuses to submit to such medical examination upon leaving the service of an employer, shall thereby waive any right to compensation from such employer for such occupational disease which later develops. The employer shall forthwith notify the commission in writing, of the employee's failure to submit to such medical examination, and such notice shall be filed in the office of the commission as in the case of medical reports, and shall serve as notice of termination of liability of such employer arising out of any claim by such individual, or by a subsequent employer because of the claim of such individual. The cost of such examination shall be borne by the employer. (Act Apr. 24, 1943, c. 633, §13.)
[176.667]

4327-9. Regular inspection.—The commission shall keep a record of employments and regularly inspect places of employment in any industry in which the hazard of an occupational disease may exist. It shall establish reasonable minimum standards of safety and healthful working conditions in such places of employment and shall furnish such employers with written rules and regulations governing the maintenance of such minimum standards of working conditions. The commission is preparing such rules, regulations or standards, relating to health, or in evaluating industrial health hazards, shall consult with the state department of health through its division of industrial health. (Act Apr. 24, 1943, c. 633, §14.)
[176.668]

4327.10. Expenses—How paid.—Any expense incurred by the commission in carrying out the purposes of this act shall be paid out of the general fund of the department of labor and industry. (Act Apr. 24, 1943, c. 633, §15.)
[176.669(1)]

4327-11. Commission to make rules.—The commission shall make such rules, regulations and orders with reference to procedure as it deems necessary not inconsistent with this act. (Act Apr. 24, 1943, c. 633, §16.)
[176.669(2)]

4330-1. Settlement of claims.
Commission properly refused to approve settlement between employer, insurance carrier, employee, and wife for herself and as guardian for minor children, it being contrary to policy of the act to permit a release of death benefits by a prospective dependent. Dale v. S., 206M99, 287NW787. See Dun. Dig. 10418.

GENERAL PROVISIONS

4337-1. Application of act to state employees; etc.
Industrial commission should not undertake responsibility of determining claims of former SERA employees. Op. Atty. Gen. (523-g-18), May 27, 1940.

Supervisors in cotton mattress program in connection with distribution of surplus cotton are not employees of the state. Op. Atty. Gen. (523g-18), Jan. 14, 1941.

A sail plane pilot, an employe of the state, is covered by the act, but cannot recover property damage. Op. Atty. Gen. (234), Nov. 12, 1941.

Boys 16 years of age or younger employed by state in forest fire fighting crews are employees of state under the Workmen's Compensation Act. Op. Atty. Gen. (523g-3), Feb. 9, 1943.

4337-4. Same—Procedure—Findings—Awards.
Op. Atty. Gen. (523g), Nov. 12, 1941.

4337-8. Departments to pay into fund.
Op. Atty. Gen. (523a-28), Sept. 11, 1942; note under §4337-9.

4337-9. Maintenance of fund.
Procedure to be followed where there is a compensation award by state industrial commission to a former employee of state teacher's college dormitory which is self-sustaining. Op. Atty. Gen., Aug. 27, 1942.

Railroad and warehouse commission is self-sustaining department and required to pay an amount certified by industrial commission. Op. Atty. Gen. (523a-28), Sept. 11, 1942.

CHAPTER 23AA

Unemployment Compensation Law

4337-21. Declaration of public policy.

See Dun. Dig. 9952a.

Amounts received by wrongfully discharged employee during his unemployment from state unemployment compensation fund were not deductible by employer in mitigation of damages. Bang v. International Sisal Co., 212 M135, 4NW(2d)113, 141ALR657. See Dun. Dig. 2532, 5850, 9952a.

Where evidence as to whether claimant for benefits was guilty of misconduct in connection with her work was in direct conflict, finding of director will not be disturbed by the court. Levy v. Doherty, 215M101, 9NW(2d) 327. See Dun. Dig. 9952j.

State Unemployment Compensation Law was an exercise of state police power. In re Auto Electric Repair & Parts Co., (DC-Ky), 41FSupp3.

Arkansas unemployment compensation law is constitutional. McKinley v. R., 143SW(2d)(Ark)38.

State legislature may determine what shall constitute employment subject to taxation without regard to existing definitions or categories and is not required to conform in every respect to national idealogy upon subject of unemployment compensation as expressed in acts of Congress. Equitable Life Ins. Co. v. Iowa Employment Security Com., 231 Iowa 889, 2NW(2d)262.

In construing state law courts are not bound by federal construction or amendments to the federal law. Shore Fishery v. Board of Review, 127NJL87, 21Atl(2d) 634.

A desire for a national cooperative scheme does not require a uniform interpretation of the various laws. Id.

State unemployment compensation laws need not receive uniform construction in order to comply with federal statutes. Singer Sewing Machine Co. v. Commission, 167Ore142, 103Pac(2d)708, 116Pac(2d)744.

Unemployment compensation is not an unlawful burden upon interstate commerce. Commonwealth v. Perkins, 342Pa529, 21Atl(2d)45. Judgment aff'd 314US586, 62 SCR484.

State law which provided for funds to which employers only contributed was constitutional. Friedman v. American Surety Co., 137Tex149, 151SW(2d)570.

4337-22. Definitions.—As used in this act, unless the context clearly requires otherwise—

A. "Base period" means the first four of the last five completed calendar quarters immediately preceding the first day of an individual's benefit year.

B. "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

C. "Benefit year" with respect to any individual means the one year period beginning with the first day of the first week with respect to which the individual files a valid claim for benefits.

D. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31, excluding, however, any calendar quarter or portion thereof which occurs prior to January 1, 1937, or the equivalent thereof, as the director may by regulation prescribe.

E. "Contributions" means the money payments required by this act to be made into the state unemployment compensation fund by an employing unit on account of having individuals in its employ.

F. "Corporation" includes associations, joint-stock companies, and insurance companies, provided, however, that this definition shall not be exclusive.

G. "Director" means the director of the division of employment and security.

H. "Employing unit" means any individual or type of organization including any partnership, association, trust, estate, joint-stock company, insurance company, or corporation, whether domestic or foreign, or the receiver, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one or more individuals performing services for it. All individuals performing services within this state for any employing unit which maintains two or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Notwithstanding any inconsistent provisions of this act whenever any employing unit contracts with or has under it any contractor or subcontractor for any work which is part of its usual trade, occupation, profession, or business, unless the employing unit as well as each such contractor or subcontractor is an employer by reason of section 4337-22 I or Section 4337-29 C, Mason's Supplement 1940, as amended by this act, the employing unit shall for all the purposes of this act be deemed to employ each such contractor or subcontractor and individuals in his employ for each day during which such contractor, subcontractor, and individual, is engaged in performing such work; except that each such contractor or subcontractor who is an employer by reason of section 4337-22 I, Mason's Supplement 1940, as amended by this act, shall alone be liable for the employer's contributions measured by wages payable to individuals in his employ. Each individual employed to perform or assist in performing the work of any agent or individual employed by an employing unit shall be deemed to be employed by such employing unit for all the purposes of this act whether such individual was hired or paid directly by such employing unit or by such agent or individual, provided the employing unit had actual or constructive knowledge of such work.

I. "Employer" means:

(1) Any employing unit which for some portion of a day but not necessarily simultaneously, in each of 20 different weeks, whether or not such weeks are or were consecutive, within the year 1936 has or had in employment eight or more individuals (irrespective of whether the same individuals are or were employed in each such day) and, for any calendar year subsequent to 1936, an employing unit which, for some portion of a day, in each of 20 different weeks, whether or not such weeks are or were consecutive, and whether or not all of such weeks of employment are or were within the state of Minnesota, within either the current or preceding calendar year, has or had in employment one or more individuals (irrespective of whether the same individual or individuals were employed in each such day);

(2) Any employing unit which acquired the organization, trade, or business or substantially all the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit, and which, if treated as a single unit with such other employing unit, would be an employer under paragraph (1) of this subsection;

(4) Any employing unit which together with one or more other employing units, is owned or controlled (by legally enforceable means or otherwise) directly or indirectly by the same interests, or which owns or controls one or more other employing units (by legally enforceable means or otherwise), and which, if treated as a single unit with such other employing units or interests or both, would be an employer under paragraph (1) of this subsection;

(5) Any employing unit which, having become an employer under paragraphs (1), (2), (3), or (4), has not, under section 4337-29, Mason's Supplement 1940 as amended by this act, ceased to be an employer subject to this act;

(6) For the effective period of its election pursuant to section 4337-29 C, Mason's Supplement 1940, as amended by this act, or any other employing unit which has elected to become fully subject to this act; or

(7) Notwithstanding any inconsistent provisions of this act, any employing unit not an employer by reason of any other paragraph of this subsection for which service is performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

J. "Employee" means every individual, whether male, female, citizen, alien, or minor, who is performing, or subsequent to January 1, 1936, has performed services in insured work.

K. (1) Subject to the other provisions of this subsection "employment" means service performed prior to January 1, 1940, which was employment as defined in this act prior to such date, and any service performed after December 31, 1939, including service in interstate commerce and service as an officer of a corporation performed for wages or under any contract of hire, written or oral, express or implied, where the relationship of master and servant exists.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if (a) the service is localized in this state; or (b) the service is not localized in any state but some of the service is performed in this state and (1) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service shall be deemed to be localized within a state if (a) the service is performed entirely within such state; or (b) the service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(4) (a) Service covered by an election pursuant to section 4337-29 C Mason's Supplement 1940, as amended by this act; and

(b) Service covered by an arrangement pursuant to section 4337-31 Mason's Supplement 1940, as amended by this act, between the director and the agency charged with the administration of any other state or federal employment and security law, pursuant to which all service performed by an individual for an employing unit is deemed to be performed entirely within this state, shall be deemed to be employment if the director has approved an election of the employing unit for which such service is performed, pursuant to which the entire service of such individual during the period covered by such election is deemed to be employment.

(5) Services performed by an individual for wages shall be deemed to be "employment" subject to this act unless and until it is shown to the satisfaction of the director that the relationship of master and servant does not exist as specified in subdivision (1) hereof or (a) such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract of hire and in fact; and (b) such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and (c) such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) Notwithstanding any inconsistent provisions of this act, the term "employment" shall include any services which are performed by an individual with respect to which an employing unit is liable for any federal tax against which credit may be taken for contributions required to be paid into a state unemployment compensation fund.

(7) The term "employment" shall not include:

(a) Agricultural labor. The term "agricultural labor" includes all services performed subsequent to December 31, 1939:

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising, harvesting or threshing any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land or brush and other debris left by a hurricane or fire, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of maple syrup or maple sugar or any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended, or in connection with the raising or harvesting of mushrooms, or in connection with the hatching of poultry, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes.

(4) In handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, any agricultural or horticultural commodity; but only if such service is performed as an incident to ordinary farming operations or, in the case of fruits and vegetables, as an incident to the preparation of such fruits or vegetables for market. The provisions of this paragraph shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(b) Domestic service in a private home, local college club, or local chapter of a college fraternity or sorority;

(c) Casual labor not in the course of the employing unit's trade or business;

(d) Service performed on the navigable waters of the United States as to which this state is prohibited by the Constitution and laws of the United States of America from requiring contributions of employers with respect to wages as provided in this act;

(e) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(f) Service performed in the employ of the United States government, or any instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this act, except that with respect to such service performed subsequent to December 31, 1939, and to the extent that the Congress of the United States shall permit states to require any instrumentalities of the United States to make payments into an unemployment compensation fund under a state unemployment compensation act; then, to the extent permitted by Congress, and from and after the date as of which such permission become effective, all of the provisions of this act shall be applicable to such instrumentalities and to services performed for such instrumentalities in the

same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and services; provided that if this state shall not be certified for any year by the Social Security Board under section 1603(c) of the Federal Internal Revenue Code, the payments required of such instrumentalities with respect to such year shall be refunded by the director from the fund in the same manner and within the same period as is provided in section 4337-34E of this act, with respect to contributions erroneously collected;

(g) Service performed in the employ of this state, or of any other state, or of any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned by this state or by one or more states or political subdivisions, and any service performed in the employ of any instrumentality of this state or of one or more states or political subdivisions to the extent that the instrumentality is, with respect to such service immune under the Constitution of the United States from the tax imposed by section 1600 of the Federal Internal Revenue Code;

(h) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress;

(i) Service performed in any calendar quarter subsequent to December 31, 1940, in the employ of any organization exempt under section 1607(c)(10) of the Federal Internal Revenue Code from the tax imposed by section 1600 of the Federal Internal Revenue Code;

(j) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a non-diplomatic representative);

(k) Service performed in the employ of an instrumentality wholly owned by a foreign government, if

(1) The service is of a character similar to that performed in foreign countries by employees of the United States government or of an instrumentality thereof; and

(2) The director finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and of instrumentalities thereof;

(l) Service covered by an arrangement between the director and the agency charged with the administration of any other state or federal employment and security law pursuant to which all services performed by an individual for an employing unit during the period covered by such employing unit's duly approved election, are deemed to be performed entirely within such agency's state;

(m) Services performed in the employ of a corporation, community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(n) Service performed subsequent to December 31, 1940, as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to state law; and service performed as an interne in the employ of a hospital by an individual who has completed a four years' course in a medical school chartered and approved pursuant to state law;

(o) Service performed subsequent to December 31, 1940, by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission; (the word "insurance" as used in this subsection shall include an annuity and an optional annuity);

(p) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(q) Service performed in the employ of any farmers' cooperative association dealing primarily with agricultural or dairy products or farmers' mutual insurance company, not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code;

(r) Service performed subsequent to December 31, 1939, without wages by an officer of a corporation which is not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code;

(s) Service performed subsequent to December 31, 1939, outside the corporate limits of a city, village, or borough of 10,000 population or more, as determined by the most recent United States census, for an employer who is not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code; provided the service of all such employer's employees are performed outside such corporate limits. For the purpose of this provision, service shall be deemed to be performed outside such corporate limits if

(1) Performed entirely outside such corporate limits; or

(2) Performed both outside and within such corporate limits, if the services performed within such corporate limits is incidental to the individual's service outside such corporate limits and is temporary or transitory in nature or consists of isolated transactions.

(t) If the service performed subsequent to December 31, 1940, during one-half or more of any pay period by an individual for the person employing him constitutes employment, all the service of such individual for such period shall be deemed to be employment; but if the service performed during more than one-half of any such pay period by an individual for the person employing him does not constitute employment, then none of the service of such individual for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the individual by the person employing him. This subsection shall not be applicable with respect to service performed in a pay period by an individual for the person employing him, where any of such service is excluded by section 4337-22, K (7) (h) and K (7) (s) of this act.

(u) Service performed as part-time student worker whose principal occupation during the year is as a student actually attending a public or private school;

Provided, however, that the specific exclusions mentioned in subsection K (7) of this section shall not be exclusive;

L. "Employment and Security Administration Fund" means the employment and security administration fund established by this act, from which administrative expenses under this act shall be paid.

M. "Employment office" means a free public employment office, or branch thereof, operated by this or any other state, territory or the District of Columbia as a part of a state-controlled system of public employment offices charged with the administration of an employment and security program of free public employment offices.

N. "Filing" means the delivery of any document to the director or any of his agents or representatives, or the depositing of the same in the United States mail properly addressed to the division with postage

prepaid thereon, in which case the same shall have been filed on the day indicated by the cancellation mark of the United States post office department.

O. "Fund" means the unemployment compensation fund established by this act.

P. "Insured work" means employment for employers as defined in this act.

Q. "Interested party", as used in this act, shall include the claimant, his base perior employers, and his most recent employers prior to the filing of a valid claim for benefits.

R. "Person" means an individual, trust or estate, a partnership or a corporation.

S. "Social Security Act" means the social security act passed by the Congress of the United States of America, approved August 14, 1935, as amended.

T. "Social Security Board" means the board established pursuant to Title VII of the Social Security Act.

U. "State" includes, in addition to the states of the United States of America, Alaska, Hawaii, and the District of Columbia.

V. "Unemployment" — An individual shall be deemed "unemployed" in any week during which he performs no service and with respect to which no wages are payable to him, or in any week of less than full time work if the wages payable to him with respect to such week are less than his weekly benefit amount. The director may, in his discretion, prescribe regulations relating to the payment of benefits to such unemployed individuals.

W. "Valid claim" with respect to any individual means a claim filed by an unemployed individual who has registered for work and who has earned wage credits during his base period sufficient to entitle him to benefits under Section 4337-25 B.

X. "Wages" means all remuneration for services, employment, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, except that such term shall not include:

(1) That part of the remuneration which, after remuneration equal to $3,000 has been paid to an individual by an employer with respect to employment during any calendar year subsequent to December 31, 1939, is paid to such individual by such employer with respect to employment during such calendar year;

(2) The amount of any payment made on behalf of an employee under a plan or system established by an employer which makes provision for his employees generally or for a class or classes of his employees (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment), on account of (a) retirement, or (b) sickness or accident disability, or (c) medical and hospitalization expenses in connection with sickness or accident disability, or (d) death, provided the employee (i) has not the option to receive, instead of provision for such death benefit, any part of such payment, or if such death benefit is insured, any part of the premium (or contributions to premiums) paid by his employer and (ii) has not the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit, or to receive a cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon termination of such plan or system or policy of insurance or of his employment with such employer;

(3) The payment by an employer (without deduction from the remuneration of the employee) (A) of the tax imposed upon an employee under section 1400 of the Federal Internal Revenue Code, or (B) of any payment required from an employee under a state unemployment compensation law; or

(4) Dismissal payments which the employer is not legally required to make;

(5) Any payments made to a former employee during the period of active military service in the armed forces of the United States by such employee, which are not legally required.

Y. "Wage credits" mean the amount of wages paid and wages due but not paid by or from an employer to an employee for insured work except that with respect to wages paid by or due from an employer to an employee for seasonal employment (as defined in section 4337-25 D Mason's Supplement 1940, as amended by this act), "wage credits" shall mean the proportion "computed to the next highest multiple of five per cent) of such wages which the customary period of operations bears to a calendar year, except that wage credits shall not include wages paid by an employer for part-time employment, who continues to give the employee part-time employment substantially equal to the part-time employment previously furnished such employee by such employer.

Z. "Week" means calendar week, ending at midnight Saturday, or the equivalent thereof, as determined in accordance with regulations prescribed by the director.

AA. "Weekly benefit amount" with respect to any particular week of total unemployment means the amount of benefits computed in accordance with the provisions of section 4337-25 of this act which an individual would be entitled to receive for such week, if totally unemployed and eligible. (As amended Apr. 28, 1941, c. 554, §1; Apr. 24, 1943, c. 650, §1.)

Act Apr. 28, 1941, c. 554, §22, amended the title of Chapter 2, Extra Session Laws 1936, to read as follows: An act to create an unemployment compensation fund from contributions by employers for the payment of compensation for involuntary unemployment, to provide for merit ratings for employers with creditable employment records, to provide for guaranteed employed accounts, to provide for cooperation with the Social Security Board of the United States of America, to provide penalties for the violations of said act, to provide for the administration thereof, to provide for the appointment of an assistant attorney general to be assigned to the division of employment and security, and to appropriate money therefor.

Sheppard v. C., 145SW(2d)(Tex)562. Cert. den. 61SCR 734.

In determining future rates based on benefit experience for years 1941, et seq., base period should be defined as provided in 1939 Laws, and not as defined prior to 1939 amendment. Op. Atty. Gen. (885), Nov. 19, 1940.

Deputy registrars of motor vehicles do not come within term "occupation" in minimum wage law, nor are they entitled to benefits of social security laws of the state. Op. Atty. Gen. (385b-2), Dec. 3, 1942.

D.

Employee of cooperative fruit marketing association, held engaged in agricultural labor and is not within unemployment compensation law. Industrial Com. v. United Fruit Growers Ass'n, 103Pac(2d)(Colo)15.

E.

State Unemployment Compensation statute providing tax upon employers of 8 or more persons and including in definition of employer any employing unit which together with one or more employing units is owned or controlled by the same interests, is unconstitutional when applied to corporation controlling interests of which are held by one stockholder, regardless of fact that majority stockholder has control of corporation in its power to dictate who corporation's directors shall be. Benner-Coryell Lumber Co. v. I., 29NE(2d)(Ind)776. Cert. den. 61 SCR741.

A company which hired a contractor to perform certain work for it, held not bound by a part of contract which stated that contractor was engaged in business in which company was not then engaged in, and where company became liable for contributions to State Unemployment Compensation Fund on account of employees working for contractor, it could withhold amount of such contributions from amount due to contractor. Strickland v. N., 200So(La)652.

Where a company hired an independent contractor to do work which was a part of regular trade and business of company, it was liable for payment of contributions on account of men employed by contractor in doing work. Id.

Fact that a president of a corporation employing 7 people, owned a majority of stock of corporation, and his family owned remainder, and that president also individually owned another company employing 6 people, held not to show that both corporations were controlled by same interests so as to put them within provisions of Missouri act. Murphy v. D., 147SW(2d)(Mo)616.

Musician in restaurant employed under contract with musicians' union which provided that the union acted

only as agent for the restaurant keeper, held the "employee" of such keeper and not of the union. Ajello v. S., 19NYS(2d)886.

Salesman using employer's vehicle on limited route and forbidden to sell competing goods, held "employee" and not "independent contractor." Perdziak, 19NYS(2d)1000.

Partner who resumed business in same building some time after dissolution and disposal of partnership properties held not a "successor" within provisions of New York unemployment insurance law, the word "successor" applying to devolution of property by statutory succession and not by voluntary acts of owners. Turano, 23 NYS(2d)213, 260AppDiv971.

Partners who carried on business formerly carried on by corporation of which they had been members, held not liable as successors of corporation for employment insurance contributions. Joachim, 23NYS(2d)229, 260App Div972.

A municipality cannot be an "employing unit". Op. Atty. Gen., (885), Oct. 6, 1939.

F.

State unemployment compensation act limited to employers of eight or more is constitutional. Maine Unemployment Comp. Comm'n. v. A., 16Atl(2d)(Me)252.

Missouri employer was not relieved from liability under Missouri Unemployment Compensation Act for year 1938 because of its non-liability under the Federal Social Security Act for that year, where it had 8 employees or more in its employment for the requisite number of days to make it liable under the Missouri law. Murphy v. H., 142SW(2d)(Mo)449.

Unemployment Compensation Law passed in January, 1937, which levied tax on all employers who employed 8 or more employees for specified period after January, 1936, was unconstitutional as applied to one who did not employ 8 or more employees at any time after law was passed. Murphy v. L., 147SW(2d)(Mo)420.

Corporation which employed 3 persons regularly but hired substitute to take place of regular employee on vacation did not employ 4 or more persons so as to come within purview of unemployment insurance statute. Mart Waterman Holding Corp. v. M., 23NYS(2d)215, 260 AppDiv971.

Provision of state unemployment compensation act precluding employer who became subject to the act at time he employed eight or more employees from terminating his coverage so long as he had one or more in his employ did not violate equal protection clause of the Fourteenth Amendment. Shelton Hotel Co. v. B., 104Pac (2d)(Wash)478.

F (1).

Secretary of corporation who performed no service and received no salary could not be counted to bring the employer into a unit employing eight or more persons. State v. W., 103Pac(2d)(Okl)533.

G.

Evidence held to sustain finding that a lumber stacker was an employee and not an independent contractor. McKinley v. R., 143SW(2d)(Ark)38.

Where alleged partnership did not have requisites of partnership, "junior partner" was entitled to compensation under Indiana Unemployment Compensation Act. Zeits, 31NE(2d)(IndApp)209.

One selling goods in a territory under a "dealer's contract," held an independent contractor and not an employee, though there was supervision to extent of stimulating activities of dealers by reports and inspection and instruction in classes and meetings, and bonuses in addition to commissions. Moorman Mfg. Co. v. I., 296NW(Ia) 791.

Claim of employee of independent contractor, engaged for specific services at a fixed price, who hired his own employees, paid and controlled them in performance of their duties without interference of others, is not allowable against employer of independent contractor. Hill Hotel Co. v. K., 295NW(Neb)397.

Saleswoman working under supervision and direction of employer was not an independent contractor but an employee and was entitled to unemployment compensation. Morton, 30NE(2d)(NYApp)369.

Corporate stock salesmen without any settled hours for work, and whose time was their own, and who used their own devices and arguments in making sales, held "independent contractors" and not "employees" within unemployment compensation law, though they were invited to attend salesmen's meetings. Fidel Ass'n v. M., 20NYS(2d)381, 259AppDiv486.

Where bank leased building from realty corporation with stipulation that realty corporation should operate and maintain building, porter in building was an employee of realty corporation, though paid out of bank funds, for purposes of unemployment insurance. Gordon, 23NYS(2d)261, 260AppDiv973.

Member of orchestra which was hired by hotel was not an "employee" of the hotel but an employee of the orchestra leader within purview of New York unemployment insurance law. Brown, 23NYS(2d)330, 260App Div972.

A non-compensated president of a corporation, whose acts are only such as are required for maintaining defendant as a corporation, as distinguished from management and conduct of business, is not an employee for whom corporation would be liable for contributions. Unemployment Comp. Div. v. P., 295NW(ND)656.

Contract by sewing machine company with agent to sell on commission, to make collections, and to do such other work as employer might direct, held an "employee." Singer Sew. Mach. Co. v. S., 103Pac(2d)(Ore)708.

A painter and paper hanger working on property of trust estate under contract with trust company held an employee of trust company as distinguished from employee of owners of several properties upon which he worked. Central Wisconsin Trust Co. v. I., 236Wis496, 295NW711.

Paper hanger and painter working upon trust properties under contract with trust company was an employee and not an independent contractor. Id.

H.

Salesmen working on commission for a securities brokerage house held to be employees requiring brokerage house to pay a tax to Connecticut Fund on their account. Robert C. Buell & Co. v. D., 18Atl(2d)(Conn)697.

Provision that separate corporations under common ownership and control are treated as one in determining tax liability does not violate state or federal constitution. New Haven Metal & Heating Supply Co. v. Danoher, 128 Conn213, 21Atl(2d)383.

Whether salesman from whose compensation automobile company deducted one per cent as required by Social Security Act and to whom Social Security card was issued as employee of the company, was an agent or servant of the company at the time of automobile accident so as to render the company liable for such salesman's negligence, held for jury and award of nonsuit was improper. Nichols v. G., 10SE(2d)(Ga)439.

Classifying two corporations as a single employing unit because the same person owns the majority of the outstanding capital stock in each does not deny equal protection or due process. Iron Street Corp. v. Michigan Un. Comp. Com'n 305Mich643, 9NW(2d)874. See Dun. Dig. 9952d.

Where one who had controlling interest in both a drugstore and a dairy gave the latter to his wife, but retained actual control, the two places were one employing unit. Avent, 4So(2d)(Miss)296. Suggestion of error overruled 4So(2d)(Miss)684. Appeal dism'd 62SCR947.

It was not intent of legislature to classify vendors of ice cream products who work independently of control of manufacturer as employees, subject to provisions of this act. Garcia v. V., 147SW(2d)(Mo)141.

Evidence held to sustain finding that solicitor of subscriptions to a daily newspaper was an employee. Todd, 22NYS(2d)393.

Musician, member of trio, organized by agent of manager of hotel, held employee of hotel and entitled to compensation. Dellapenta, 24NYS(2d)748, 261AppDiv863.

Question of whether claimant was an employee or an independent contractor is question of fact. Seibert, 24 NYS(2d)755, 261AppDiv867.

Where one who owned a beauty shop and adjoining barber shop sold the latter to a brother-in-law who thereafter furnished all his own supplies and paid rent, he was not employer of buyer. Appeal of Scolomerio, 30NYS(2d)363, 262AppDiv1053.

Provision that where several units were under the control of one person they should be treated as one unit in determining liability for taxation held valid. J. M. Willis B. & B. Shop, 15SE(2d)(NC)4.

Three different partnerships which controlled three stores, through individual members, were not subject to the unemployment compensation law, even though three persons were members of all three partnerships. Bass. 151SW(2d)(Tex)567.

Provision that two units which are controlled or may be controlled by the same interests shall be treated as one unit is valid. State v. Kitsap County Bank, 10Wash (2d)520, 117Pac(2d)228.

To treat two units under common control as a single unit, it is not necessary that there should have been any attempt to evade the law. Id.

Members of an orchestra which played at a restaurant and at various other places under contract which their leader made with owners held to be customarily engaged in independent, established business within Wyoming law. Unemployment Compensation Com'n v. M., 111Pac (2d)(Wyo)111.

H (1).

Owner of bulk station through whom refiner distributed petroleum products under a consignment agreement held an independent contractor and not an employee of the refiner. Texas Co. v. H., (DC-NY)32FSupp428.

President and vice president of corporation operating store who worked in the store on weekly wage, held employees, but wife of president, nominally acting as secretary, but performing no service and receiving no wages, was not an "employee," and she could not be counted as such to bring the personnel to eight in number. State v. Welch & Brown, 103Pac(2d)(Okl)533.

H (2).

In computing unemployment benefits of a railroad relay telegrapher time during which telegrapher was working under superintend of a division located in another state was properly deducted, so far as unemployment in 1938 is concerned. Stevens v. M., 207M429, 291NW890.

H (5).

One having exclusive right to sell product of a milk company and receiving for his services no more than the excess of the price received from the company's patrons and the cost to him of the milk, held within the Utah Act. Creameries of Am. v. I., 102Pac(2d)(Utah)300.

Newspaper carrier purchasing papers from publisher at specified price, and selling same in his own way at a fixed

price, held one performing "services" for "wages" within Utah Unemployment Compensation Act. Salt Lake Tribune Pub. Co. v. I., 102Pac(2d)(Utah)307.

H (6).

"Employment" does not include service performed for city of Minneapolis. Op. Atty. Gen., (885), Oct. 6, 1939.

H (6)(d).

Labor rendered in a greenhouse on grounds of a cemetery is not agricultural labor. Christgau v. W., 208M 263, 293NW619.

Labor rendered in a greenhouse and on a tract of land cultivated in connection therewith is not agricultural labor under North Dakota act where greenhouse was primarily a commercial enterprise, notwithstanding amendment to federal act. Un. Comp. Div. v. Valker's Greenhouses, 296NW(ND)143.

Rule defining "agricultural labor" approved. Op. Atty. Gen., (885d-1), March 1, 1940.

H. (6)(f).

The captain, mate, and deckhand, of non-self-propelled oil barges, subject to federal inspection were seamen, and their employer was not liable to contribute on their account to state unemployment insurance fund. Blue Line Tank Barges, (NY Dept Lab), 1940AMC1589.

Members of mat crew, rock barge crew, pile driver crew, including watchmen, pile drivers and deck hands, and towboat deck hands and operators, employed on improvement of navigability of rivers under supervision of army engineers, accomplished by fabricating lumber mats from floating barges and sinking them to river bed at designated places, were "members of crew" of a "vessel" and were not entitled to benefits under Iowa act. Woods Bros. Const. Co. v. I., 296NW(Iowa)345.

H (6)(1).

A public cemetery corporation is not a corporation organized and operated exclusively as a charitable corporation. Christgau v. W., 208M263, 293NW619.

Whether hospital created by city under ordinances is subject to unemployment compensation act is a question of fact. Op. Atty. Gen., (885d-7), Feb. 29, 1940.

H (6) (k).

Action for a declaratory judgment as to constitutionality of 1939 amendment making act inapplicable to employers of less than eight outside municipalities of less than 10,000 population, brought by an employee who was still employed, was dismissed because not based on a justiciable controversy. Seiz v. C., 207M277, 290NW802. See Dun. Dig. 4988a.

State Unemployment Compensation Law denying benefits to employee outside municipality of less than 10,000 population and whose employer is not subject to Federal Social Security Act, is constitutional as against objection of discrimination and improper classification. Eldred v. D., 209M58, 295NW412.

I.

A partnership organized by the president of a dissolved corporation, who took over its assets, was not a "successor in interest". Wiener v. Miller, 29NYS(2d)652, 262AppDiv924.

Tree planting and repairing did not constitute "operation" of a lumbering camp. Layman v. Commission, 167 Ore379, 117Pac(2d)974.

It is not necessary that there be "production" to constitute "operation" of a lumber camp. Id.

Where a corporation organized by the owners of taxi cabs exercised joint control over the drivers, with the individual owners, both were employers within the meaning of the law. Farwest Taxi Service, 114Pac(2d)(Wash)164.

I(1).

Employing unit must make a return for part-time student workers' earnings. Op. Atty. Gen. (885d-1), Apr. 29, 1943.

I (4).

Fourteenth amendment is not violated by a definition of an employing unit to include separately owned businesses where owner of one business controls the other by legally enforceable means or otherwise. Godsol v. Michigan Un. Comp. Comm., 302Mich652, 5NW(2d)519, 142 ALR910.

I(7).

Employing unit must make a return for part-time student workers' earnings. Op. Atty. Gen. (885d-1), Apr. 29, 1943.

J.

Person appointed to attend at dances is an "officer of the law" and is not an employee of proprietor of dance hall. Op. Atty. Gen. (802a-16), Dec. 24, 1942.

K.

One selling cemetery lots on commission held to be an employee. Park Improvement Co. v. Review Board, 36 NE(2d)(Ind)985.

One employed to inspect fruit shipments for an association of fruit growers, and paid out of a fund furnished by them, was an employee of the association, even though selected by the Bureau of Agricultural Economics of the Federal Government. Perry v. Western Perishable Carload Receivers Ass'n, 27NYS(2d)695, 261AppDiv 739.

Sewing machine salesman selling on commission basis, but subject to manufacturer's rules and having no title to goods sold, held not to have established an independent business. Singer Sewing Machine Co. v. Commission, 167Ore142, 103Pac(2d)708, 116Pac(2d)744.

Master and servant relationship is not necessary to qualify for unemployment compensation. Id.

One employed selling sewing machines on a commission basis, subject to various rules of the manufacturer, held to be an employee. Id.

Neither the consignees of a wholesale petroleum products dealer nor their employees were employees of the wholesale dealer. Texas Co. v. Bryant, 152SW(2d)(Tenn) 627.

Life insurance agent selling under contract with company held not independent contractor. Life & Casualty Insurance Co. v. Commission, 178Va46, 16SE(2d)357.

"Distributors" who sold aluminumware on commission, subject to various rules of the manufacturer, held to be employees. Foy, 10Wash(2d)317, 116Pac(2d)545.

K (1).

Texas Co. v. Higgins, (DC-NY), 32FSupp428. Aff'd, (CCA2), 118F(2d)636.

K (5).

Orchestra leader held an independent contractor and members of his orchestra were his "employees" and not the employees of the establishments for which his orchestra performed. Williams v. U. S., (CCA7)126F(2d)129, rev'g (DC-Ill)38FSupp536. Cert. den. 317US655, 63SCR52. See Dun. Dig. 9952e.

Clerk of corporation who kept minutes of meetings and was clerk during entire year, but made no charge for his services, they being incidental to his duties as attorney for the corporation, was an individual in employ of the corporation. Deecy Products Co. v. Welch, (DC-Mass), 36FSupp272. Aff'd (CCA1), 124F(2d)592.

Where sawmill operators hired by lumber company to cut wood and saw lumber for it were not controlled in any way as to their manner of doing the work they were independent contractors and not employees for which the lumber company could be taxed under the Social Security Act. Burrus v. Early, (DC-Va), 44FSupp21. See Dun. Dig. 9952e.

Members of a crew of a commercial halibut fishing vessel, employed on the basis of a share in the catch, were employees rather than part owners so that owner of vessel was subject to social security tax on account of such members. Jacobson v. U. S., (DC-Wash), 44FSupp685. See Dun. Dig. 9952e.

Where substance of a contract between owner of a barbershop and barbers showed employer-employee relationship, fact that contract was made in the form of a sub-lease would not relieve owner from duty to pay Social Security Tax. McDermott v. Henricksen, (DC-Wash), 45FSupp277. See Dun. Dig. 9952e.

The fact that a company did not force a salesman to attend its sales meetings did not show lack of control over him. Park Improvement Co. v. Review Board of Unemployment Compensation Division of Dept. of Treasury, 109IndApp538, 36NE(2d)985.

Taxi cab drivers paying $3.00 flat to owner for each 12-hour period without accounting for compensation received from passengers were employees of taxi cab company, and not merely bailees. Kaus v. Unemployment Compensation Commission, 230 Iowa 860, 299NW415. See Dun. Dig. 9952a.

Under federal legislation and Iowa statutes one who is an independent contractor under the common-law definition is not an "employee" entitled to unemployment compensation, and a solicitor for a farm magazine working on a commission basis and in a group with other solicitors assigned to various rural mail routes was an independent contractor and not an employee. Meredith Pub. Co. v. Iowa Emp. Sec. Com., 6NW(2d)(Iowa)6. See Dun. Dig. 9952e.

Sublessee of a wholesale and retail used car dealer repairing cars of lessor and its customers for about two-thirds of amount charged by lessor, difference being carried on books of lessor as rental, was an independent contractor and not an employee, and employee of sublessee was not employee of lessee. Bert Baker v. Ryce, 301Mich84, 3NW(2d)20.

Fact that right of inspection of work done is reserved does not necessarily constitute an employer and employee relationship. Id.

One employed by a national bank to manage real estate purchased at a mortgage foreclosure sale was not entitled to unemployment compensation. National Newark & Essex Banking Co. v. Unemployment Compensation Commission, 126NJLaw387, 19Atl(2d)803.

Members of a band who were under contract with amusement company held to be employees of company even though hired by and immediately controlled by band leader. Steel Pier Amusement Co. v. Commission, 127NJ L154, 21Atl(2d)767.

Leader of an orchestra which was booked to play at theater through a booking agent held to be an independent contractor and not entitled to benefits. Earle, 27NYS(2d)310, 262AppDiv789.

One who delivered newspapers to stores and newsboys and made collections from stores in his own name which were deposited in bank account of publishing company, held to be an employee of such company. LeValley, 27 NYS(2d)338, 262AppDiv792.

Persons who spent full time selling advertising for a publication, having a drawing account against which commissions were charged, and reporting at publisher's office every day, were entitled to compensation when discharged. Keith, 30NYS(2d)206, 262AppDiv984.

One selling bakery goods on commission, but required to work certain hours over specified route and restricted to selling goods of certain bakery was an employee rath-

er than an independent contractor. Castaldo, 30NYS(2d)(Sup Ct)736. See Dun. Dig. 9952e.

General agent of life insurance company and subagent under him held entitled to benefits. State v. National Life Ins. Co., 14SE(2d)(NC)689.

Traveling salesman selling clothing on commission held to be an employee of the manufacturer, notwithstanding fact that he also sold goods for another concern. J. G. Leinbach Co. v. Unemployment Compensation Board of Review, 146PaSuper237, 22Atl(2d)57.

That one was a common law independent contractor would not prevent him from being an "employee" under act, and a salesman of stock food under a "dealer's contract" was an "employee", though he had specific territory in which he might sell, used his own automobile, worked when and as and where he pleased and paid his own expenses, and was paid a commission on his sales. Moorman Mfg. Co. v. Ind. Commn., 241Wis200, 5NW(2d)743. See Dun. Dig. 9952a.

Under statutes as they existed in 1939 members of an orchestra hired by proprietor of dance hall for one night, leader being paid in a lump sum, were employees and operator of dance hall could be compelled to pay contributions to fund, and it was immaterial that at that time such employees were not eligible to unemployment compensation. Maloney v. Ind. Com., 9NW(2d)(Wis)623, vacating mandate in 242Wis165, 7NW(2d)580. See Dun. Dig. 9952c.

K (6)(n).

Employer of persons largely engaged in clearing and preparing land for purpose of raising crops and livestock, and in maintaining and driving machinery for that purpose, was not liable to pay tax. Wayland v. Kleck, 57 Ariz135, 112Pac(2d)207.

Men engaged in caring for and packing plants for a large commercial greenhouse concern, held to be engaged in agricultural labor. Henry A. Dreer, Inc. v. Commission, 127NJL149, 21Atl(2d)690.

Those engaged in raising fur bearing animals were engaged in farm work and not entitled to unemployment compensation. Bridges,28NYS(2d)312, 262AppDiv19.

Employees of cooperative association formed for purpose of storing, washing, packing and shipping fruit grown by its members were not engaged in agricultural labor, and were entitled to unemployment compensation benefits. Cowiche Growers v. Bates, 10Wash(2d)585, 117 Pac(2d)624.

Prior to 1940 employees of operator of large fur farm were not "farm laborers" under Wisconsin law, though they at times engaged in growing crops and feeding horses. Cedarburg Fox Farms v. Industrial Commission, 241Wis604, 6NW(2d)687. See Dun. Dig. 9952e.

K (6)(d).

Federal Social Security Act does not prevent a state from applying an unemployment compensation tax to a dredging company so as to cover members of a dredge crew engaged entirely in maritime labor. Great Lakes Dredge & Dock Co. v. Charlet, (DC-La), 43FSupp981. Aff'd (CCA5), 134F(2d)213. Aff'd 319US293, 63SCR1070. See Dun. Dig. 9952c.

Fishermen operating in open boats a short distance off shore held not to be members of a "crew". Shore Fishery v. Board of Review, 127NJL87, 21Atl(2d)634.

Fisherman engaged in handling pound nets from open boat entirely within territorial waters of state of New Jersey held to come within provisions of state Unemployment Compensation Law. Shore Fishery v. Board of Review of U. E. Com'n., 21 Atl. (2d) (NJ) 634. See Dun. Dig. 9952a.

Engineer on tugboat operating on navigable waters held to be a member of a crew. Knowlson, 30NYS(2d)(SupCt)930. See Dun. Dig. 9952c.

K (6)(m).

Association of railway employees organized to provide medical, surgical, and hospital care to employees who pay a certain percentage of their wages in return of its benefits was not organized for charitable purposes within meaning of federal social security tax provisions exempting charitable institutions from taxation. Smith v. Reynolds, (DC-Minn), 43 F. Supp. 510. See Dun. Dig. 9952a.

A club organized as a non-profit organization for the purpose of studying government and governmental affairs, and finding ways and means of improving such affairs was exempt from the federal social security tax as educational institution, even though it had operated a cigar and candy counter and served meals, at little or no profit. City Club of Milwaukee v. U. S., (DC-Wis), 46FSupp673. See Dun. Dig. 9952c.

A club incorporated as a non-profit corporation "to provide a home and meeting place for women who wish to establish a center for music, art and literature" was not exempt from social security tax, regardless of any decision of commissioner of internal revenue. Colony Town Club v. Michigan Unemployment Compensation Commission, 301Mich107, 3NW(2d)28. See Dun. Dig. 9952a.

K(6)(o).

Agents selling memberships in mutual benefit association held to be insurance agents within meaning of amendment to Colorado law, excepting insurance agents selling policies on commission from its provisions. Brannaman v. International Service Union Ass'n, 118Pac(2d)(Colo)457. See Dun. Dig. 9952c.

K(6)(r).

Officer of a corporation who receives no wages or other remuneration is not included as an employee in determining whether corporation is liable for tax. State v. Kenyon, 153SW(2d)(Tex)195.

K (7)(a).

Member of a crew employed by an insurance company in constructing houses, barns, cribs and other buildings upon farm and repairing and improving old buildings, on land acquired by insurance company under foreclosure and leased to tenant and being prepared for sale, was not engaged in "agricultural labor" within Iowa statutes, notwithstanding amendment of federal act after Iowa statute went into effect so as to bring such work within definition of "agricultural labor". Equitable Life Ins. Co. v. Iowa Employment Security Com., 231 Iowa 889, 2NW(2d)262. See Dun. Dig. 9952a et seq.

X.

Remuneration of an employee may consist of difference between price which he pays his employer for goods and price at which he sells them, a percentage of the sale price of goods sold by the employe to customers and collected by him from them, and it is not required that it be paid by employer. Kaus v. Unemployment Compensation Commission, 230 Iowa 860, 299NW415. See Dun. Dig. 9952a.

Money obtained by an employee by padding his expense account and which was not reported to the employer was not wages. Shelley v. National Carbon Co., 285Ky502, 148SW(2d)686.

Tips received by hotel waiter are not part of his wages. Alexander Hamilton Hotel Corp. v. Board of Review, 127 NJL184, 21Atl(2d)739.

Moneys paid, pursuant to an order of the National Labor Relations Board directing reinstatement of an employee with back pay, constitutes remuneration and wages. McCoy v. Remington Rand, Inc., 27NYS(2d)298, 262AppDiv790.

Value of board and lodging furnished to members of crew of commercial halibut fishing vessel were properly included in computing the social security tax of the vessel owner. Jacobson v. U. S., (DC-Wash), 44FSupp685. See Dun. Dig. 9952k.

Commissions to a salesman may constitute "wages". Moorman Mfg. Co. v. Ind. Commn., 5NW(2d)(Wis)743. See Dun. Dig. 9952a.

4337-23. Unemployment compensation fund.—A. There is hereby established as a special fund, separate and apart from all public moneys or funds of this state, an unemployment compensation fund, which shall be administered by the director exclusively for the purpose of this act. This fund shall consist of:

(1) All contributions collected under this act, together with any interest thereon collected pursuant to section 4337-34, Mason's Supplement 1940, as amended by this act;

(2) All fines and penalties collected pursuant to the provisions of this act;

(3) Interest earned upon any moneys in the fund;

(4) Any property or securities acquired through the use of moneys belonging to the fund;

(5) All earnings of such property or securities; and

(6) All moneys received for the fund from any other source.

All moneys in the fund shall be mingled and undivided.

B. The state treasurer shall be ex-officio the treasurer and custodian of the fund, who shall administer such fund in accordance with the directions of the director and shall issue his warrants upon it in accordance with such regulations as the director shall prescribe. He shall maintain within the fund three separate accounts;

(1) A clearing account;

(2) An unemployment trust fund account; and

(3) A benefit account.

All moneys payable to the fund, upon receipt thereof by the director, shall be forwarded to the treasurer who shall immediately deposit them in the clearing account. All moneys in the clearing account, after clearance thereof, shall, except as herein otherwise provided, be immediately deposited with the Secretary of the Treasury of the United States of America to the credit of the account of this state in the unemployment trust fund, established and maintained pursuant to section 904 of the Social Security Act, as amended, any provisions of law in this state relating to the deposit, administration, release, or disbursement of moneys in the possession or custody of this state to the contrary notwithstanding. Refunds payable pursuant to sections 4337-34 D and 4337-22 H (6) (b), Mason's Supplement 1940, as amended by this act, may be paid from the clearing account or the

benefit account. The benefit account shall consist of all moneys requisitioned from this state's account in the unemployment trust fund in the United States Treasury. Except as herein otherwise provided, moneys in the clearing and benefit accounts may be deposited by the treasurer, under the direction of the director, in any depository bank in which general funds of the state may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Moneys in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. Such money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of this state; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of the state. The treasurer shall give a separate bond conditioned upon the faithful performance of his duties with respect to the fund in an amount not less than $25,000. The bond shall be approved by the attorney general of this state. Premiums for said bond shall be paid from the administration fund. All sums recovered for losses sustained by the fund shall be deposited therein.

C. (1) Moneys requisitioned from this state's account in the unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 4337-34 D, Mason's Supplement 1940, as amended by this act. The director, or his duly authorized agent for that purpose, shall from time to time requisition from the unemployment trust fund such amounts not exceeding the amounts standing to this state's account therein, as he deems necessary for the payment of such benefits and refunds for a reasonable future period. Upon receipt thereof the treasurer shall deposit such moneys in the benefit account and shall issue his warrants for the payment of benefits solely from such benefit account. Expenditures of such moneys in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers of money in their custody. All warrants issued by the treasurer for the payment of benefits and refunds shall bear the signature of the treasurer and the counter signature of the director or his duly authorized agent for that purpose.

(2) Any balance of moneys requisitioned from the unemployment trust fund which remains unclaimed or unpaid in the benefit account after the expiration of the period for which such sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of benefits and refunds during suceeding periods, or, in the discretion of the director, shall be redeposited with the Secretary of the Treasury of the United States of America, to the credit of this state's account in the unemployment trust fund, as provided in subsection B of this section. (As amended Act Apr. 28, 1941, c. 554, §2.)

D. * * * * *.

D. Transfer of money from state account in hands of Secretary of the Treasury to railroad unemployment insurance account.

Stevens v. M., 207M429, 291NW890; note under §4337-22(H)(2).

State does not lose sovereignty by providing for a deposit of surplus funds with the United States Treasurer. Commonwealth v. Perkins, 342Pa529, 21Atl(2d)45. Judgment aff'd 314US586, 62SCR484.

Unemployment taxes are not general funds of the state. Id.

4337-24. Contributions from employers—Payments.

—A. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages (as defined in Section 4337-22X) for employment. Such contributions shall become due and be paid by each employer to the division of employment and security for the fund in accordance with such regulations as the director may prescribe, and shall not be deducted, in whole or in part, from the wages of individuals in such employer's employ. No rule of the director shall be put in force which will permit the payment of such contributions at a time or under conditions which will not allow the employer to take credit for such contribution against the tax imposed by section 1600 of the Internal Revenue Code.

(2) In the payment of any contribution, a fractional part of a cent shall be disregarded unless it amounts to one-half or more in which case it shall be increased to one cent.

B. (1) Each employer shall pay contributions equal to the following percentages of wages payable by him with respect to employment:

(a) Nine-tenths of one per centum with respect to unemployment occurring during the calendar year 1936;

(b) One and eight-tenths per centum with respect to employment occurring during the calendar year 1937;

(c) Two and seven-tenths per centum with respect to employment occurring during the calendar years of 1938, 1939, 1940; and

(2) Each employer shall pay contributions equal to two and seven-tenths per centum of wages paid by wages overdue and delayed beyond the usual time of payment from him with respect to employment occurring during each calendar year subsequent to December 31, 1940, except as may be otherwise prescribed in subsections C, D and E of this section, provided, however, that contributions, payment of which has been deferred to May 31, 1941, with respect to employment occurring during the calendar year 1940, shall not become due from or payable by an employer not subject to the tax imposed by section 1600 of the Federal Internal Revenue Code.

C. (1) The director shall, for the year 1941 and 1942, determine the contribution rate of each employer whose unemployment experience as an employer under this act is equivalent to the minimum requirements of section 1602 of the Federal Internal Revenue Code for the purpose of obtaining additional credit thereunder with respect to any reduced rates of state contributions.

(2) "Beneficiary wages" for the purpose of this section, means wages paid or payable by an employer for employment to an employee during his base period, except that with respect to wages paid or payable by an employer to an employee during his base period for seasonal employment as defined in Section 4337-25 D of this act, "beneficiary wages" shall mean the proportion of wages paid or payable by an employer to an employee for seasonal employment during his base period which is allowed to the employee as wage credits in accordance with Section 4337-22 Y of this act. "Beneficiary wages" as defined in this subsection shall be charged in the year in which benefits are first paid or payable pursuant to a claim for benefits.

(3) (a) The "beneficiary wage ratio" of each employer for the year 1941 shall be a percentage equal to the total of his beneficiary wages for the three immediately preceding completed calendar years divided by his total taxable payroll for the same three years on which all contributions due have been paid to the director for the fund on or before January 31, 1941.

(b) The "beneficiary wage ratio" of each employer for the year 1942 shall be a percentage equal to the total of his beneficiary wages for the thirty-six (36) consecutive calendar month period ending on June 30, 1941, divided by his total taxable payroll for the same period on which all contributions due have been paid to the division on or before July 31, 1941.

D. (1) The director shall for the year 1943 and for each calendar year thereafter determine the contribution rate of each employer whose unemployment experience as an employer under this act is equivalent to the minimum requirements of section 1602 of the Federal Internal Revenue Code for the purpose of

obtaining additional credit thereunder with respect to any reduced rates of state contributions.

(2) Benefits paid to an individual pursuant to a valid claim filed subsequent to June 30, 1941, shall be charged, against the account of his employer as and when paid. The amount of benefits so chargeable against each base period employer's account shall bear the same ratio to the total benefits paid to an individual as the base period wage credits of the individual earned from such employer bear to the total amount of base period wage credits of the individual earned from all his base period employers. In making computations under this provision, the amount of wage credits if not a multiple of $1.00, shall be computed to the nearest multiple of $1.00.

(3) (a) The director shall, for the calendar year 1943, and for each calendar year thereafter, compute an experience ratio for each employer. Such experience ratio shall be the quotient obtained by dividing the total benefits chargeable to his account which were paid during the 36-month period ending on June 30 of the preceding calendar year divided by his total taxable payroll for the same three years on which all contributions due have been paid to the division of employment and security on or before July 31 of the preceding calendar year. Such experience ratio shall be computed to the fifth decimal point.

(b) Notwithstanding any inconsistent provisions of this act, whenever any portion of the experience period ends prior to July 1, 1941, one-fourth of the beneficiary wages resulting shall be deemed to constitute benefits chargeable, and the resulting quotient shall be used in computing the employer benefit ratio.

(4) The director shall, for the year 1943, and for each calendar year thereafter, determine a schedule of rates varying from and including the "standard rate" which shall be the highest rate applicable under the schedule. The position of such rates with respect to the standard rate shall be determined on the basis of the ratio of the total assets of the fund as of July 31, of the preceding calendar year, excluding contributions not yet paid on July 31 of such calendar year; to the average (one-third) of the total amount of benefits paid during the three year period ending June 30 of the year immediately preceding, in accordance with the following schedule and as herein further provided.

(A) Fund 3.5 or more times average annual benefits 10 categories	(B) Fund 3 to 3.5 times average annual benefits 11 categories	(C) Fund 2.5 to 3.0 times average annual benefits 13 categories	(D) Fund 2.0 to 2.5 times average annual benefits 15 categories	(E) Fund below two times average annual benefits 12 categories
....	....	....	....	3.25
....	....	....	....	3.25
....	....	....	....	3.25
....	....	....	3.25	3.25
....	....	....	3.25	3.25
....	....	3.25	3.25	3.25
....	....	3.25	3.25	3.25
....	3.00	3.00	3.00	3.00
2.75	2.75	2.75	2.75	2.75
....	....	....	....	....
2.50	2.50	2.50	2.50	2.50
2.25	2.25	2.25	2.25	2.25
2.00	2.00	2.00	2.00	2.00
1.75	1.75	1.75	1.75	....
1.50	1.50	1.50	1.50	....
1.25	1.25	1.25	1.25	....
1.00	1.00	1.00	1.00	....
.75	.75	.75	.75	....
.50	.50	.50	.50	....

(5) The director shall, after having determined the schedule of rates for the current calendar year

(a) divide equally into the number of categories indicated in paragraph (4) of this subsection, the sum of the preceding year's payroll of all employers eligible for experience rating under the provisions of subsection (1) of this section;

(b) assign a contribution rate to each payroll category in accordance with the schedule of rates for the current calendar year and classify employers in accordance with their experience ratios, commencing with the lowest ratio;

(c) allocate the payrolls of employers eligible for experience rating under this section for the preceding year into separate categories in the order of their experience ratios as classified, commencing with the lowest ratio and the payroll category having the lowest contribution rate. When an employer's payroll falls within two payroll categories, the entire payroll shall be allocated to the payroll category into which more than 50 per centum of his payroll falls; in case 50 per centum of an employer's payroll falls within each of two categories, his total payroll shall be allocated to the category having the lower rate.

If, subsequent to the date on which the director allocated the payrolls of all employers into categories in the order of their experience ratio pursuant to section 4337-24, any circumstance requires the recomputation of any employer's experience ratio, such recomputation shall not alter the category of any other employer, but the employer whose experience ratio has been recomputed shall be placed, for the purpose of subsection (4), in that category to which he is entitled to such recomputation.

(6) Each employer's contribution rate for the year 1943 and for each year thereafter shall be the rate applicable to the payroll category to which his payroll has been allocated, except if payrolls of employers having a zero experience ratio exceed the amount allocated to the lowest contribution rate, then all of such payrolls shall be assigned the lowest rate available under the schedule.

E. (1) Any employer who subsequent to December 31, 1940, has become or becomes subject to Chapter 23 AA, Mason's Minnesota Statutes, 1940 Supplement, as amended by Laws 1941, Chapter 554, and as amended by this act, whose total current payroll, as defined in this subsection, for any calendar quarter within the period beginning January 1, 1942, and ending June 30, 1945, exceeds $50,000 shall pay war risk contributions, and any other employer whose total current payroll, as defined in this subsection, for any calendar quarter within such period exceeds $50,000, which has increased 100% or more over and above his normal payroll for the corresponding calendar quarter in 1940, shall in addition to his normal contributions pay war risk contributions on that part of his current payroll over and above 200% of his normal payroll, for the first such calendar quarter or the quarter commencing January 1, 1943, whichever is later and for each calendar quarter thereafter to and including June 30, 1945.

(2) As used in this subsection, "normal contributions" means the contributions computed at a percentage rate on an employer's current payroll which he is required to pay under subsections B, C or D of this section.

(3) "War risk contributions" means the additional contributions required under this subsection at a rate equal to 3%.

(4) "Normal payroll" means an employer's payroll for any calendar quarter in the year 1940 with respect to wages paid for insured work which corresponds to the same calendar quarter in any year within the period beginning January 1, 1942, and ending June 30, 1945. The term "normal payroll" shall include the payroll of any organization, trade, or business of another employing unit acquired by the employer by purchase, consolidation, merger, liquidation, or other form of reorganization.

(5) "Current payroll" means any current quarterly payroll with respect to wages paid for insured work in any year within the period beginning January 1, 1942, and ending June 30, 1945.

(6) The total current payrolls and total benefits paid to unemployed workers of any employer who is required to pay war risk contributions shall be in-

cluded as factors in determining such employer's normal contribution rate for the calendar year 1943 and thereafter in the same manner as other employers' contribution rates are determined; except, however, that benefits paid subsequent to June 30, 1945, or after the cessation of hostilities in the present war, as declared by proper authority of the United States, whichever is the earlier, to unemployed workers of any employer who is required to pay and has paid war risk contributions as provided for herein, shall not be included as a factor in determining such employers' future contribution rate until such benefits so paid shall equal the total amount of war risk contributions paid by such employer into the unemployment compensation fund, or until wage credits accrued to such employer's workers during the period for which war risk contributions were required are no longer available as a basis for payment of benefits, whichever event occurs first.

(7) The current payroll of any employer who is required to pay war risk contributions under this subsection shall not be included as a factor in determining the contribution rate of any employer who is not required to pay war risk contributions for the calendar year 1943 and thereafter up to and including June 30, 1945, or to the next computation date of contribution rates after the cessation of hostilities in the present war, as declared by proper authority of the United States whichever is the earlier.

F. (1) The director shall at least once each year notify each employer of the benefits as determined by the division which have been charged to his account subsequent to the last notice. Unless reviewed in the manner hereinafter provided, charges set forth in such notice, or as modified by a redetermination, a decision of a referee, or the director, shall be final and shall be used in determining the contribution rates for all years in which the charges occur within the employer's experience period and shall not be subject to collateral attack by way of review of a rate determination, application for adjustment or refund, or otherwise.

(2) The director shall notify each employer of his rate of contributions as determined for any calendar year pursuant to this section. Such notice shall contain the contribution rate, the factors used in determining the individual employer's experience rating, and such other information as the director may prescribe. Unless reviewed in the manner hereinafter provided, the rate as determined or as modified by a redetermination, a decision of a referee, or the director shall be final except for fraud and shall be the rate upon which contributions shall be computed for the calendar year for which such rate was determined, and shall not be subject to collateral attack for any errors, clerical or otherwise, whether by way of claim for adjustment or refund, or otherwise.

(3) The director may in his discretion within six months from the date of mailing such notice order a redetermination or review of any benefit charge or rate of determination. Any employer desiring to obtain a review shall, within 30 days from the date appearing on the notice of the determination to be reviewed, file with the director a protest setting forth the reasons therefor. Upon receipt of such protest the director may redetermine the matter or refer the matter for hearing before a referee appointed by him for that purpose. In the event of a redetermination, a notice thereof shall be mailed to the employer. If within 10 days from the date of the redetermination an employer files an appeal, the matter shall be referred to a referee for hearing. After affording the parties reasonable opportunity for a fair hearing, the referee shall affirm, modify; or set aside the determination. The referee may order the consolidation of two or more appeals whenever, in his judgment, such consolidation will not be prejudicial to any interested party. At any such hearing a written report of any employee of the division which has been authenticated shall be admissible in evidence. Appeals from the decision of the referee shall be made in the same manner as appeals from the decision of an appeal tribunal.

G. (1) The director shall maintain a separate account for each employer, and shall credit his account with all the contributions paid by him. Nothing in this act shall be construed to grant any employer or individuals in his service prior claims or rights to the amounts paid by the employer into the fund.

H. For the purposes of this section, two or more employing units which are parties to or the subject of a merger, consolidation or other form of reorganization effecting a change in legal identity or form, shall be deemed to be a single employing unit if the director finds that

(1) Immediately after such change the employing enterprises of the predecessor employing unit or units are continued solely through a single employing unit as successor thereto; and

(2) Immediately after such change such successor is owned or controlled by substantially the same interests as the predecessors employing unit or units; and

(3) The consolidation of such two or more employing units as a single employing unit for the purposes of this subsection would not be inequitable.

(4) The provisions of this section shall apply to acquisitions prior to as well as subsequent to the effective date of this act for the purpose of computing contributions due for the year 1941 and subsequent years.

Provided, however, that in no event shall a successor be assigned a rate of less than 2.7% until such time as all of the unpaid contributions of the predecessor have been paid.

I. Notwithstanding any inconsistent provisions of this act, if prior to September 1, 1943, an employer files a claim for adjustment in which he alleges that he had reemployed, within the period from January 1, 1938, to June 30, 1942, inclusive, an employee for which beneficiary wages were debited against him, and the director finds that such employee did not receive the maximum benefit-payments to which he was entitled within any benefit year because of such reemployment, the employer's beneficiary wage record for such period shall be credited with beneficiary wages equal to the percentage of unpaid benefits to the maximum benefit of the beneficiary wages charged for said employee.

Provided, however, that any adjustment granted under this section shall be used in the determination of the contribution rate provided in section 4337-24 D and E, Mason's Supplement 1940, as amended by this act, only for the year 1943 and subsequent years, except if such unemployment existed because of a labor dispute at the factory, establishment, or other premises at which he was an employee or was last employed prior to such dispute, in such cases any adjustment granted under this section shall be used in the determination of the contribution rate provided in section 4337-24 D and E, Mason's Supplement 1940, as amended by this act, only for the year 1943 and subsequent years.

Notwithstanding any inconsistent provisions of this act, or prior acts or regulations, if prior to September 1, 1943, an employer filed a claim for adjustment in which he alleges:

(1) that as the result of section 4337-24 C (3) (b), he has been charged more than $240.00 in resulting benefits chargeable for any claimant during any single benefit year, and the director determines that such charge for any one claimant has exceeded $240.00 during any benefit year, such amount in excess of $240.00 shall be credited against benefits paid and charged against such employer's account.

(2) that as the result of adjustments previously made under section 4337-24 H of 1941 act, or as

amended by this act, in the event the original beneficiary wages charged for any one claimant during a benefit year, prior to adjustment under section 4337-24 H exceeded $960.00, and the director so determines, a readjustment shall be made and such employer's account credited proportionately for any previously charged beneficiary wages in excess of $960.00 for each such claimant.

Provided, however, that any adjustment granted under this section shall be used in the determination of the contribution rate provided in section 4337-24 D of this act, only for the year 1943 and subsequent years.

J. Any employer who has paid contributions with respect to employment performed subsequent to December 31, 1937, which exceed the total amount of benefits paid to his unemployed workers during the same period by an amount equal to or in excess of twelve per cent of his total payroll for employment during the twelve-month period preceding June 30 of any calendar year subsequent to 1942, and who has been assigned a contribution rate pursuant to subsection D of this section, which is in excess of one-half of one percent, may file a claim for a contribution rate of one-half of one percent within the period hereinbefore provided for the filing of appeals from the originally assigned contribution rate. The director shall examine the matter and if he finds that the facts are in accordance with this provision such employer shall be assigned a contribution rate of one-half of one percent for the next succeeding calendar year.

Provided, however, that in the event the Social Security Board shall determine that either subsections I or J are not in conformity with the various provisions of the Federal Internal Revenue Code or the Social Security Act then such subsection I shall have no force or effect. (As amended Apr. 28, 1941, c. 554, §3; Apr. 24, 1943, c. 650, §2.)

Tax imposed was excise tax. In re Auto Electric Repair & Parts Co., (DC-Ky), 41FSupp3.

Where certain employees of a boys' military school were required to accept board and lodging with students, as a matter of discipline, and they were paid the same amount for their other work as other employees not boarded and not lodged, and were paid nothing in cash for their services in boarding and lodging with the students, commission was justified in finding that board and lodging furnished was a part of wages and subject to taxation under California Act. California Employment Com'n v. B., 110Pac(2d) (Cal)729.

There was nothing to prevent a Commission from enforcing a ruling which was contrary to its previous decision that board and lodging furnished certain employees was not a part of their wages. Id.

It was not error to exclude a ruling of Internal Revenue Department, in action to determine whether a brokerage house was liable to be taxed for unemployment compensation fund on account of its salesmen working on commission. Robert C. Buell & Co. v. D., 18Atl(2d)(Conn)697.

A federally chartered savings and loan association member and member of a federal home loan bank is exempt from state taxation for unemployment compensation. Waterbury Savings Bank v. Danaher, 128Conn78, 20Atl(2d)455.

A state chartered bank which has become a member of a federal home loan bank by stock subscription, is not exempt from state taxation for unemployment compensation. Id.

State unemployment compensation law providing for tax on corporations in interstate commerce employing eight or more persons held not to violate federal constitution. Gerratt v. Huiett, 16 S. E. (2d) (Ga) 587. See Dun. Dig. 9952k.

Taxes are excise taxes. Benner-Coryell Lumber Co. v. I., 29NE(2d)(Ind)776.

Division of Employment and Security could not fix an employer's rate of contribution to unemployment fund without at some stage of proceedings granting employer notice and an opportunity to be heard on merits, notwithstanding employer failed to give notice to division of separation of an employee from his employment as required by a regulation. Juster Bros. v. Christgau, 214M 108, 7NW(2d)501. See Dun. Dig. 9952o.

Private mining corporation which sold entire output to federal government was not exempt from taxation as a government instrumentality. Peisker v. Commission, 45NM307, 115Pac(2d)62.

Amount of unemployment compensation insurance tax owing from bankrupt to state could be set off in claim against state for refund of liquor license fee. Siegel v. S., 24NYS(2d)120, 175Misc515.

Where there was no proof that an employer had failed to file a report for the purpose of determining the amount of his contribution due under New York law, or that such report had been filed but was incorrect, there was no authority for the commissioner making a determination of the amount due. Electrolux Corp., 26NYS(2d)164, 261AppDiv487.

Trustee in bankruptcy could not recover bankrupt payment to Unemployment Insurance fund, unless he came within the provisions of the act. Siegel, 27NYS(2d)383, 262AppDiv789.

In corporate dissolution proceedings claim of federal government for social security taxes and of the state for unemployment compensation taxes are in parity and should be paid in equal shares. Rivard v. Bijou Furniture Co., 21Atl(2d)(RI)563.

The 1939 amendment to Washington act making state's claim for unemployment taxes a superior lien on property of a corporation, in dissolution proceedings, did not affect chattel mortgage executed before amendment was passed. Cascade Fixture Co., 8Wash263, 111Pac(2d)991.

Under Washington Law of 1937, where a corporation was being dissolved and its assets liquidated, claim of state for unemployment taxes was inferior to a chattel mortgage previously executed on corporation property. Id.

West Virginia Income Tax Act allowing deduction from gross income of "ordinary and necessary" expenses of business, does not authorize deduction as such expenses, of taxes paid by taxpayer on account of either (1) old age benefits and unemployment compensation under Social Security Act, (2) the Bituminous Coal Act, (3) state unemployment insurance, (4) state gross sales. Christopher v. J., 12SE(2d)(WVaApp)813.

Monetary burden placed on employers by West Virginia Unemployment Compensation law is an excise tax within constitutional power of legislature. Id.

A.

In bankruptcy unpaid unemployment compensation contributions are classed, as far as priority is concerned, as administration expenses. Missouri v. E., (CCA8)111F(2d)992, 42AmB(NS)634. Cert. den. 61SCR43.

Interest is not allowable on such claims. Id.

Due process on appeal from assessment of employer under Unemployment Compensation Law, held to require a full hearing after notice, the original assessment having been made ex parte. Beaverdale Memorial Park v. D., 15Atl(2d)(Conn)17.

Employers who employed less than eight during year 1940, where payrolls were not subject to excise tax under federal law, who terminated business during 1940 and from whom accrued taxes were collected under Reg. 3G are entitled to refund of contributions. Op. Atty. Gen. (885d-1), Oct. 27, 1941.

C.

As affecting merit rating of employer whose former employee was disqualified under §4337-27, it is immaterial that overt act giving rise to a disqualification occurred prior to April 23, 1939. Op. Atty. Gen., (885), Oct. 18, 1939.

Regulation 15 creates a presumption against employer who has failed to comply with requirements of a separation notice be delivered to Division of Employment and Security showing conditions which may disqualify worker from benefits, and an employer may rebut this presumption by producing facts by affidavit or otherwise showing disqualifications. Op. Atty. Gen. (885), Nov. 19, 1940.

C.(1).

Computation of employer's contribution for year 1941 must be based upon events which occurred prior to effective date of 1939 amendment, even where overt act giving rise to disqualification occurred and benefit year commenced prior to that amendment. Op. Atty. Gen., (885), April 24, 1940.

Any experience which occurs subsequent to computation date for a year may not be included for purposes of determining any employer's rate for a particular year. Op. Atty. Gen. (885D-2), Aug. 6, 1941.

C (2).

In determining future rates based on benefit experience for years 1941, et seq., base period should be defined as provided in 1939 Laws, and not as defined prior to 1939 amendment. Op. Atty. Gen. (885), Nov. 19, 1940.

D.

Charges made to employer's account and which have become final cannot be cleared by giving retroactive effect to a subsequent amendment. Op. Atty. Gen. (885d-2), Oct. 14, 1943.

E.

Element of stoppage of work due to a strike for some period of time during each of one or more quarters in the year 1940 that results in a reduction of payroll and consequent subjectivity of such employer to war risk contributions cannot be considered. Op. Atty. Gen. (885d-1), June 1, 1943.

E (2).

Where division made error in computation of contribution rate for an employer, who did not appeal therefrom and paid his tax, director could correct the error in a subsequent year. Op. Atty. Gen. (885b), Dec. 15, 1942.

H.

Word "determined" as used in last paragraph contemplates an authoritative act on part of Social Security Board, but a minute of the board incorporating a determination that sub-section does not conform with various provisions of internal revenue code is sufficient, and

there need not be a hearing prior to the determination. Op. Atty. Gen. (885), June 17, 1941.

Reemployment must have prevented eligibility for receipt of maximum available benefits by employee, and whether or not reemployment did so prevent such eligibility is a question of fact to be determined by director, and unless employer has reemployed employee for a period equal to number of weeks which could have been but was not compensated, a determination allowing an adjustment could not be sustained. Op. Atty. Gen. (885D-2), Aug. 5, 1941.

Any experience which occurs subsequent to computation date for a year may not be included for purposes of determining any employer's rate for a particular year. Op. Atty. Gen. (885D-2), Aug. 6, 1941.

4337-25. Benefits payable—Time payable.—A. All benefits provided herein shall be payable from the fund and shall be paid through employment offices, in accordance with such regulations as the director may prescribe.

B. (1) An individual's weekly benefit amount and maximum amount of benefits payable during his benefit year shall be the amounts appearing in column A, B and C respectively in the table in this subsection on the line on which in column A of such table there appear the total wage credits accruing in his base period for insured work.

A Wage Credits in Base Period	B Total Maximum Amount of Benefits Payable during a Benefit Year	C Weekly Benefit Amount
Under $200.00	None	None
$ 200. $224.99	$ 70.00	$ 7.00
225. 249.99	80.00	8.00
250. 299.99	90.00	9.00
300. 349.99	108.00	9.00
350. 399.99	120.00	10.00
400. 449.99	132.00	11.00
450. 549.99	168.00	12.00
550. 649.99	182.00	13.00
650. 749.99	196.00	14.00
750. 849.99	210.00	15.00
850. 949.99	225.00	15.00
$ 950—$1,049.99	240.00	15.00
$1,050—$1,149.99	256.00	16.00
$1,150—$1,249.99	272.00	17.00
$1,250—$1,499.99	288.00	18.00
$1,500—$1,749.99	304.00	19.00
$1,750—and over	320.00	20.00

(2) Each eligible individual who is unemployed in any week shall be paid with respect to such week a benefit in an amount equal to his weekly benefit amount less that part of his earnings, payable to him with respect to such week which is in excess of $3.00. Such benefit, if not a multiple of $1.00, shall be computed to the next higher multiple of $1.00.

(3) The wage credits of an individual earned in employment by any base period employer during the period commencing with the end of the base period and ending on the date on which he filed a valid claim shall be reduced and cancelled by each benefit payment in the same ratio as the portion of each benefit payment which has been charged to such employer bears to the total benefits to which such individual is entitled.

C. Any person who, by reason of his fraud has received any sum as benefits under this act to which he was not entitled after a fair hearing, and in the discretion of the director, shall be liable to repay such sum to the division of employment and security for the fund or to have such sum deducted from any future benefits payable to him under this act.

D. (1) "Seasonal employment" means employment in any industry or any establishment or class of occupation in any industry which is engaged in activities relating to the first processing of seasonally produced agricultural products in which, because of the seasonal nature thereof, it is customary to operate only during a regularly recurring period or periods of less than 26 weeks in any calendar year. The director shall, after investigation and hearing, determine [and] may thereafter from time to time redetermine such customary period or periods of seasonal operations. Until the effective date of such determination by the director, no employment shall be deemed seasonal.

(2) Any employer who contends that employment in his industry or any establishment or occupation in such industry is seasonal shall file with the director a written application for a hearing and determination of such matter. Upon receipt of such application, the director shall fix a time and place for such hearing and shall give the employer written notice thereof of not less than 15 days prior to the time of such hearing. Within three days after receipt of such notice, the employer shall post in a conspicuous place in each department of each establishment of his industry, with respect to which such application was made, a written notice setting forth the time and place of such hearing and shall cause such notice to be published in the first next issue of the legal newspaper published nearest such place of business and shall furnish to the director proof of such posting and publication.

(3) In order to insure the prompt disposition of all applications for seasonality determination, the director shall designate one or more representatives, herein referred to as referees, to conduct hearings thereon at which hearings the employer and his employees shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. After having heard the matter, the referee shall promptly make findings of fact and render a decision thereon. Notice of such decision together with a copy of the findings of fact and the decision shall be promptly given to the parties to the hearing, and unless the employer or any other party to such matter, within ten calendar days after the delivery of such notice or within 12 calendar days after such notice was mailed to his last known address, files an appeal with the director from such decision, such decision shall be final, and benefits shall be paid or denied in accordance therewith.

(4) The director may, on his own motion, cause an investigation of any industry or class of occupation in any industry which he believes to be seasonal in nature, and, after a hearing on such matter, the referee may make findings of fact and render his decision thereon based upon the facts disclosed by such investigation and hearing.

(5) Any employer, employee, or other party to the hearing may appeal from the decision of the referee in the same manner as appeals are provided for in this act relative to decisions made by an appeal tribunal in regard to claims for benefits under this act.

E. (1) Notwithstanding any inconsistent provisions of this act, the benefit rights of military trainees shall be determined in accordance with the following provisions of this subsection for the periods and with respect to the matters specified therein. Except as herein otherwise provided, all other provisions of this act shall continue to be applicable in connection with such benefits.

(2) The term "military service" as used in this subsection means active service in the land or naval forces of the United States, but the service of an individual in any reserve component of the land or naval forces of the United States who is ordered to active duty in any such force for a period of 30 days or less shall not be deemed to be active service in such force during such period.

(3) The term "military trainee" as used in this subsection means an individual who entered military service after March 31, 1940, who continued such service for not less than 90 consecutive days, and whose military service was terminated on or before July 1, 1945.

(4) With respect to any military trainee, the first benefit year following the termination of his military service shall be the one year period beginning on the first day of the first week next following the date of such termination.

(5) With respect to a benefit year as defined in Paragraph (4) of this subsection, the base period of a military trainee shall be the four completed calendar quarters immediately preceding the date of his entry into such service.

(6) The provisions of Section 4337-26 D of this act with respect to waiting period shall not be applicable to a benefit year as defined in Paragraph (4) of this subsection.

(7) An otherwise eligible military trainee shall be entitled during the benefit year as defined in Paragraph (4) of this subsection, to a weekly benefit amount and a maximum total amount of benefits payable during a benefit year in accordance with the provisions contained in Subsection B of this section.

(8) No military trainee shall be deemed eligible for benefits under this act unless he has applied for and been denied reinstatement in his former employment, or such employment is not available.

(9) The provisions of Section 4337-27 of this act shall not be applied to any military trainee after the termination of his military service by reason of any act or course of action on his part prior to the date of entry into such service.

(10) If, under an act of Congress, payments with respect to the unemployment of individuals who have completed a period of military service are payable by the United States, a trainee shall be disqualified for benefits with respect to any week beginning within a benefit year as defined in Paragraph (4) of this subsection until he has exhausted all his rights to such payments from the United States. (As amended Apr. 28, 1941, c. 554, §4; Apr. 24, 1943, c. 650, §3.)

Employer was not a party to a proceeding by employees to secure benefits, especially where he had no notice of such application and no opportunity to be heard, and decisions awarding benefits were not binding upon him merely because he did not appeal therefrom, as affecting fixing of his rate of contribution to unemployment fund. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 9952k.

B (3).

All claims filed subsequent to July 1, 1943, should be considered first benefit year claims within meaning of terms of provision providing for cancellation of wage credits. Op. Atty. Gen. (885c-1), May 3, 1943.

D.

Lumbering company which operated all year round in five out of eleven years was not engaged in a seasonal occupation. Layman v. Commission, 167Ore379, 117Pac (2d)974.

"Seasonal conditions" include conditions of the weather peculiar to a particular season of the year. Id.

D (1).

Right to benefit shall apply only to longest seasonal period or periods which are customary, and that is true regardless of whether employer has been granted a seasonality determination by commission by reason of delay, and rule of commission confining scope of seasonal employment to that performed subsequent to date of seasonality determination or Dec. 31, 1938, whichever is the later, cannot change the substance of the law. Bielke v. A., 206M308, 288NW584.

E.

A claimant coming within provisions of this section may choose whether to file his claim as a military trainee or whether to file it under §4337-28. Op. Atty. Gen. (885c-1), Apr. 9, 1942.

Section should not be applied so as to affect rights to benefits which have accrued by virtue of filing of a valid claim prior to July 1, 1941. Id.

A discharge from active to reserve status constitutes a termination of military service. Id.

E (8).

Suitable work exception as amended by Laws 1943, c. 659. Op. Atty. Gen. (885c-2), June 17, 1943.

"Former employment" means most recent reemployment. Op. Atty. Gen. (855a), July 8, 1943.

4337-26. Who are eligible to receive benefits.—An individual shall be eligible to receive benefits with respect to any week of unemployment only if the director finds that:

A. He has registered for work at and thereafter has continued to report to an employment office, or agent of such office, in accordance with such regulations as the director may prescribe; except that the director may by regulation waive or alter either or both of the requirements of this subsection as to types of cases or situations with respect to which he finds that compliance with such requirements would be oppressive or would be inconsistent with the purposes of this act;

B. He has made a claim for benefits in accordance with such regulations as the director may prescribe;

C. He was able to work and was available for work in his usual trade or occupation or in any other trade or occupation for which he demonstrates he is reasonably fitted and is actually seeking work;

D. He has been unemployed for a waiting period of two weeks during which he is otherwise eligible for benefits under this act. No individual shall be required to serve a waiting period of more than two weeks within the one year period subsequent to filing a valid claim and commencing with the week within which such valid claim was filed. Such weeks of unemployment need not be consecutive.

E. No week shall be counted as a week of unemployment for the purposes of this section:

(1) Unless it occurs subsequent to the filing of a valid claim for benefits;

(2) Unless it occurs after benefits first could become payable to any individual under this act;

(3) If he is receiving, has received, or is claiming remuneration in the form of

(a) dismissal payment or wages in lieu of notice whether legally required or not; such wages shall act to extend the waiting period of an individual before benefits shall be paid because of employment by such employer and shall not be reduced by any employment during the period for which such dismissal wages were paid;

(b) compensation for loss of wages under the workmen's compensation law of this state, or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(c) old age benefits under Title II of the Social Security Act, as amended, or similar payments under any act of Congress, or this state or any other state, or pension payments from any fund, annuity, or insurance provided by or through the employer and to which the employer contributes 50% or more of the total of the entire premiums or contributions to the fund; provided, that if such remuneration is less than the benefits which would otherwise be due under this act, he shall be entitled to receive for such week, if otherwise eligible, benefits reduced by the amount of such remuneration;

(d) unemployment compensation benefits under any law of this state, or of any other state, or the federal government; provided, that if the appropriate agency of such other state or the federal government finally determine that he is not entitled to such unemployment benefits, this provision shall not apply. (As amended Apr. 28, 1941, c. 554, §5; Apr. 24, 1943, c. 650, §4.)

A law which changed the requirements necessary to obtain relief did not violate obligations of any contract when applied to one who became unemployed at a time when provisions of a previous law were in effect. Shelley v. National Carbon Co., 285Ky502, 148SW(2d)686.

A compensable claim for benefits under the Nebraska act must have some relation to, or connection with, the employment which employee has lost. W. O. W. Life Ins. Soc. v. Olsen, 4 N. W. (2d) (Neb) 923. See Dun. Dig. 9952f.

A.

Stop-order on failure of claimant to register pursuant to notice, held proper. Volet v. M., 19NYS(2d)977.

D.

If employee does not file a claim until after four weeks of ineligibility have expired, the waiting weeks and weeks of ineligibility run consecutively. If employee leaves his employment under disqualifying circumstances and filed his claim the next day, the four weeks of ineligibility and the two waiting weeks, if he is unemployed, runs concurrently. If employee quits his employment under disqualifying circumstances and files a claim the next day, but becomes employed 8 days later, one waiting week would run concurrently with a portion of the first two weeks of inelegibility, and if he became unemployed again 17 days later he would still have one waiting week to serve which would not run concurrently with the week of ineligibility. Op. Atty. Gen. (885c-2), June 16, 1943.

E.
"Weekly benefit amount" means actual weekly benefit amount and not adjusted weekly benefit amount to next higher multiple of $1. Op. Atty. Gen., (885), March 9, 1940.

A week of disqualification and a waiting period week may run concurrently. Op. Atty. Gen. (885C-1), Aug. 12, 1941.

4337-27. Who are disqualified from benefits.—An individual shall be disqualified for benefits: A. If such individual voluntarily and without good cause attributable to the employer discontinued his employment by such employer and all wage credit earned in such employment shall be cancelled. Any such individual shall be deemed ineligible for benefits based upon wage credits from any base period employers for the week in which such leaving occurred and for the next three following weeks; provided that this provision shall not apply to any individual who left his employment to accept employment in an industry, occupation or activity in accordance with War Manpower policies of the United States or to accept employment offering substantially better conditions of work or substantially higher wages or both. However, under such conditions of separation, the individual's benefits based upon wage credits earned from the employer from whom he so separated shall be reduced by 25% and benefits paid, if any, of the remaining 75% shall not be considered in determining the future contribution rate of such employer, and any such individual shall be deemed ineligible for benefits based on wage credits from any base period employer for three weeks of unemployment in addition to his waiting period.

B. If such individual was discharged by any employer for misconduct connected with his work or for misconduct which interferes with and adversely affects his employment and all wage credits earned in such employment shall be cancelled. Any such individual shall be deemed ineligible for benefits based upon wage credits from any base period employers for three weeks of unemployment in addition to the waiting period.

C. If such individual's unemployment was caused by separation from employment pursuant to a rule of any employer of such individual whereby any female in the employ of any such employer shall be dismissed within a period of 90 days after acquiring a marital status or after such marital status first becomes known to the employer all wage credits earned in such employment shall be cancelled; provided, however that:

(1) Such rule shall have been in effect and posted continuously in a conspicuous place in each establishment of the employer's place of business not less than six months immediately preceding the date on which such marital status was acquired; and

(2) Such individual's wages are not the only support of herself or the main support of an immediate member of her family;

(3) Such employer may re-employ any such individual for a period not exceeding 90 days in any one year without invalidating the marital rule or without affecting any previous disqualification because of such rule; provided that such wage credits earned in such reemployment shall not also be cancelled because of such marital rule;

(4) During the present world war any employer may, by posting a notice in the same manner as provided in subdivision (1) hereof, suspend the operation of such marital rule for a period of the duration and not exceeding six months following the cessation of hostilities in such war at which time such rule may be reinstated and will then become effective on any individual who has acquired a marital status during such period of suspension or was subject to dismissal under such rule at the time of suspension thereof.

D. If such individual's unemployment is due to separation from such employer for the purpose of assuming marital or family obligations and all wage credits earned in such employment shall be cancelled. No benefits shall be paid based on employment with any previous employer until such individual has had employment subsequent to such separation, for a period of not less than six weeks during each of which wages were equal to the weekly benefit amount for total unemployment.

E. If the director finds that he has failed, without good cause, either to apply for available, suitable work when so directed by the employment office or the director or to accept suitable work when offered him, or to return to his customary self-employment (if any) when so directed by the director. Such disqualification shall continue until he shall have earned at least $200.00 in wages in employment after such refusal of employment. Suitable work shall be his former employment or any work for which such individual is reasonably fitted and for which work the wages are equal to 125% of the weekly benefit amount for total unemployment.

(1) In determining whether or not any work is suitable for an individual, the director shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience, his length of unemployment and prospects of securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable, and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(c) If as a condition of being employed the individual would be required by an employer to join a company union or to resign from or refrain from joining any bona fide labor organization.

F. If such individual has left or partially or totally lost his employment with an employer because of a strike or other labor dispute. Such disqualification shall prevail for each week during which such strike or other labor dispute is in progress at the establishment in which he is or was employed, except that this disqualification shall not act to deny any individual the right to benefits based on employment subsequent to his separation because of a strike or other labor dispute if such an individual has in writing notified the employer involved in such strike or other labor dispute of his resignation and acceptance of his resignation and acceptance of other bona fide employment and provided further that such resignation is accepted by all parties to the strike or other labor dispute so that such individual is no longer considered an employee of such employer. For the purpose of this section the term "labor dispute" shall have the same definition as provided in the Minnesota Labor Relations Act. Nothing in this subsection shall be deemed to deny benefits to any employee who becomes unemployed because of a lockout or by dismissal during the period of negotiation in any labor dispute and prior to the commencement of a strike.

(7) [G] If such individual cannot accept his former employment when offered by such employer for reasons not attributable to such employer or if he is unable to perform such work or is no longer eligible or available for such employment and all wage credits earned in such employment shall be cancelled.

(8) [H] For the week with respect to which he knowingly and wilfully fails to disclose any remuneration received by him for services performed for the purpose of obtaining benefits or a greater amount of benefits than he otherwise would have been paid and for each week thereafter during the remainder of

his benefit year. (As amended Apr. 28, 1941, c. 554, §6; Apr. 24, 1943, c. 650, §5.)

State v. Marcus, 210M576, 299NW241; note under §6240-18½a.

Division of Employment and Security could not fix an employer's rate of contribution to unemployment fund without at some stage of proceedings granting employer notice and an opportunity to be heard on merits, notwithstanding employer failed to give notice to division of separation of an employee from his employment as required by a regulation. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 9952o.

Division of Employment and Security cannot by regulation invoke a conclusive presumption or estoppel against an employer who has not given notice of separation of an employee from his employment, so as to prevent such employer from establishing actual facts as to such separation in proceedings to determine his rate of contribution to the unemployment compensation fund. Id.

Employer's failure to pay wages when due is good cause for quitting, and quitting work, singly or collectively, without intention to return to employment, does not constitute a labor dispute, but where employees walk out, maintain picket lines, and induce a shut-down of business to coerce prompt payment of past-due wages by collective action, it does constitute a labor dispute. Deshler Broom Factory v. Kinney, 140Neb889, 2NW(2d)332.

Director cannot adopt a rule prescribing that an unemployed individual in order to remove disqualification must have been employed in subsequent employment for at least a period of one week and then unemployed through no fault of his own. Op. Atty. Gen., (885), Sept. 25, 1939.

Account of employer from whose employment an individual has been separated under circumstances set forth in this section should not be charged with benefits paid in cases where individual has subsequently been employed and then unemployed through no fault of his own. Id.

Disqualification imposed by this section may not be removed by subsequent services performed in employment in a foreign state. Id.

As affecting merit rating of employer whose former employee was disqualified it is immaterial that overt act giving rise to a disqualification occurred prior to April 23, 1939. Op. Atty. Gen., (885), Oct. 18, 1939.

Computation of employer's contribution for year 1941 must be based upon events which occurred prior to effective date of 1939 amendment, even where overt act giving rise to disqualification occurred and benefit year commenced prior to that amendment. Op. Atty. Gen., (885), April 24, 1940.

Employer may rebut presumption of qualification of worker separated from employment by producing facts by affidavit showing disqualification. Op. Atty. Gen. (885), Nov. 19, 1940.

Disqualifying issues cannot be properly determined on basis of confidential information not disclosed to claimant. Op. Atty. Gen. (885c-2), Oct. 9, 1942.

A. Quitting work without cause.

Where employee in Iowa voluntarily quit his job in order to accept employment with another and new employment terminated about seven weeks later due to lack of work, he was disqualified from receiving any of benefits provided by law based on his wage credits that were at time of his voluntary quitting credited to his account, and to which benefits he would have been entitled had there been no statutory disqualification. Iowa Public Service Co. v. Rhode, 230Iowa751, 298NW794.

One who voluntarily leaves his work is not entitled to unemployment compensation. Mandel v. U., 15Atl(2d)(Pa)479.

An employer had good grounds for construing the Unemployment Compensation Act to mean that it was not bound to furnish a former employee, who had voluntarily quit his employment, with a wage and separation notice. Chambers v. R., 13SE(2d)(SC)281.

One who voluntarily resigned his employment to go to school, where he was unavailable for work between hours of 9 a. m. and 1 p.m. was not entitled to benefits. Keen v. T., 148SW(2d)(Tex)211.

A week of disqualification and a waiting period week may run concurrently. Op. Atty. Gen. (885C-1), Aug. 12, 1941.

If individual has been separated from two or more employers during his base period under circumstances described in subsections (1) and (2), disqualification periods would run consecutively. Op. Atty. Gen. (885C-2), Sept. 18, 1941.

Disqualification provisions of subsections (1) and (2) applies to all cases in which a claim for benefits has been filed on or after July 1, 1941. Id.

Disqualification period under subsections (1) and (2) will be fulfilled and satisfied by separation of number of weeks imposed regardless of whether individual is employed or unemployed during such weeks. Id.

If employee does not file a claim until after four weeks of ineligibility have expired, the waiting weeks and weeks of ineligibility run consecutively. If employee leaves his employment under disqualifying circumstances and filed his claim the next day, the four weeks of ineligibility and the two waiting weeks, if he is unemployed, runs concurrently. If employee quits his employment under disqualifying circumstances and files a claim the next day, but becomes employed 8 days later, one waiting week would run concurrently with a portion of the first two weeks of ineligibility, and if he became unemployed again 17 days later he would still have one waiting week to serve which would not run concurrently with the week of ineligibility. Op. Atty. Gen. (885c-2), June 16, 1943.

"Employment" is not used in a defined sense. Op. Atty. Gen. (885c-2), June 18, 1943.

A separation from employment resulting from a force over which an employee has no control and which is not attributable to the employer does not constitute a "voluntary" quitting resulting in cancellation of wage credits. Op. Atty. Gen. (885c-2), Oct. 12, 1943.

(A) (1).

Director of employment and security was justified in finding that resignation of chambermaid was not voluntary but was obtained under a threat to withhold claimant's wages under a garnishment which employer believed to be defective, and at the same time in finding that claimant was discharged for misconduct by leaving her place of employment several hours early without consent or knowledge of her employer. Chellson v. State Div. of Emp. and Sec., 214M332, 8NW(2d)42. See Dun. Dig. 9952i.

Evidence held to sustain finding by commission that chambermaid in hotel left work voluntarily following just criticisms by head housekeeper and was not entitled to benefits. Wolfe v. Ind. Com., 7NW(2d)(Iowa) 799. See Dun. Dig. 9952i.

Under Nebraska Act, an employee who has been discharged for ordinary misconduct is entitled to maximum benefits, to commence after a certain waiting period. Grand Island Baking Co. v. Frantz, 4 N. W. (2d) (Neb) 921. See Dunn. Dig. 9952i.

A wife who voluntarily leaves her employment for "the sole and only reason of being with her husband" in another city, to which he has been transferred by his employer, does so "without good cause" and thus disqualifies herself as a claimant for benefits within meaning of Nebraska Act. W. O. W. Life Ins. Soc. v. Olsen 4 N. W. (2d) (Neb) 923. See Dun. Dig. 9952i.

Where claimant worked for same employer during all or part of base period and also during lag quarter and uncompleted calendar quarter up to time of separation by quitting without good cause, penalty should be imposed against claimant for current benefit year and should not be disqualified for benefits during next benefit year so period of employment which fell within original lag or uncompleted calendar quarters becomes a part of new base period. Op. Atty. Gen. (885C-2), Aug. 13, 1941.

(A)(2).

Director did not abuse his discretion in disqualifying chambermaid for six weeks, though resignation was not voluntary, where she was guilty of misconduct by leaving her place of employment several hours early without consent or knowledge of her employer, causing employer to bring about resignation. Chellson v. State Div. of Emp. & Sec., 214M332, 8NW(2d)42. See Dun. Dig. 9952i.

Condonation did not apply to a taxicab driver who was guilty of misconduct and was involved in six accidents, and it could not be found that sole cause for discharge was the sixth accident. Checker Cab Co., v. Ind. Com., 242Wis429, 8NW(2d)286. See Dun. Dig. 9952i.

Where evidence as to whether claimant for benefits was guilty of misconduct in connection with her work was in direct conflict, finding of director will not be disturbed by the court. Ley v. Doherty, 215M104, 9NW(2d) 327. See Dun. Dig. 9952i.

(A)(3).

Purpose of disqualification is to allow an employer to establish and continue a policy prohibiting employment of married women without thereby subjecting himself to a higher contribution rate, and where employee was separated by A January 1, 1940, because of marital rule, and employee did not file a claim for benefits but obtained employment from B which was retained until June 1, 1941, at which time she was separated because of lack of work, disqualification imposed was an elimination of wage credits earned from A but employee was entitled to receive benefits on wage credits earned from B if she is otherwise eligible thereto. Op. Atty. Gen. (885C-2), Aug. 15, 1941.

Where employee was employed by A on January 1, 1940, and was separated on March 25, 1941, because of lack of work, and did not file a claim but obtained employment from B, which she retained until June 1, 1941, at which time she was separated because of marital rule which credits earned from B will be cancelled so that they may not be considered in determining future benefits in event B should appear in a subsequent base period, and in addition thereto, benefits on wage credits earned in base period will be withheld until employee has reestablished herself in labor market by subsequent bona fide employment. Id.

Disqualifications imposed by marital rule cancel wage credits earned from employer from whom claimant was separated due to marital rule, and benefits based on other wage credits to which claimant is otherwise entitled are withheld until claimant has reestablished herself in labor market by bona fide employment subsequent to separation from marital rule. Id.

A(4).

A discharged employee is not required to make reasonable efforts to apply for suitable work unless "so directed

by the employment office of the director", and an employer's failure to take an offered position of one and one-half days' duration was fully explained by evidence that employee obtained temporary work through her own efforts. Ley v. Doherty, 215M104, 9NW(2d)327. See Dun. Dig. 9952i.

Evidence that a steam cleaner in dry cleaning department of laundry would get into trouble with his union and other unions and that he could very soon find employment in his special trade because of shortage of trained men sustained finding that he had not disqualified himself from benefits by a refusal to accept light garage work, stock work, and stump truck driving, offered by his employer during a slack season, involving less pay and longer hours. Bowman v. Troy Launderers & Cleaners, 215M226, 9NW(2d)506. See Dun. Dig. 9952i.

A(4)(b)(1).

Evidence held to show that shut-down of logging operations was due to labor disputes, and therefore those thereby unemployed could not recover unemployment compensation. Latham v. Commission, 167Ore371, 117Pac(2d)971.

(A)(6).

Where there was a slow down, labor trouble, and a strike in a key plant of a large manufacturing corporation, requiring other plants of that corporation to close because of shortage of parts, all employees were involved in labor dispute and not entitled to benefits, where all such employees were interested in new contract provisions involved in negotiation and all were represented by same union. Chrysler Corp., 301Mich351, 3NW(2d)302. Cert. den. 317US635, 63SCR44. See Dun. Dig. 9952a.

(A)(7).

Provision does not require cancellation of wage credit accrued to employee by reason of employment with a former employer if he fails to accept former employment with such employer when offered because he is ill and unable to work at the time such former employment is offered, or is employed by another employer not engaged in defense industry at the time the offer is made, or is employed by an employer engaged in defense industry at the time the offer is made and, in accordance with War Manpower Commission regulations, is unable to obtain a release from his present employer to accept re-employment with his former employer, or fails to accept such former employment because it does not constitute suitable work within meaning of subsection E, and whether employee loses credit when he has removed from the state and resides in another state many miles distant at the time of the offer of re-employment depends upon the facts. Op. Atty. Gen. (885c-2), Sept. 17, 1943.

B. Discharged for misconduct.

"Misconduct" which will render discharged employee ineligible is limited to conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standard of behavior which employer has right to expect of his employees, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of employer's interests or of employee's duties and obligations to his employer, and does not reach mere inefficiency, unsatisfactory conduct, failure in good performance as result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion. Boynton Cab Co. v. Neubeck, 237Wis249, 296NW636.

Evidence held to sustain finding that overcharge by cab driver and its withholding was not basis for his discharge. Id.

Cab drivers were not guilty of "misconduct" warranting discharge for "checking in short" contrary to rules, in view of fact that such practice had been tolerated by employer and absence of any specific warning to employees to stop practice. Boynton Cab Co. v. Schroeder, 237 Wis264, 296NW642.

Poor earnings per mile by a cab driver did not constitute "misconduct" warranting discharge without compensation if due to inefficiency rather than to loafing or failure to perform work to best of ability. Id.

C. Marriage.

Discharge of an employee for acquiring a marital status cancels only wage credit earned from employer from whom she was separated, and not wage credits earned under an earlier employer. Op. Atty. Gen. (885C-2), July 19, 1943.

E. Strikes.

Pesnell v. Department of Industrial Relations of Alabama, 29AlaApp528, 199So720; 240Ala457, 199So726. Cert. den. 313US590, 61SCR1113, 85LEd1545.

Where miner's unemployment was caused by failure of union and employer to agree upon new employment contract, there was a "labor dispute" precluding recovery by worker of unemployment compensation. Dept of Industrial Relations v. P., 199So(AlaApp)720. Aff'd 199So(Ala)726.

Definition of a labor dispute under U. S. Code, Title 29 §113(c) and Title 29, §152(9) did not define a labor dispute within meaning of the state unemployment compensation law. Department of Industrial Relations v. Drummond, 211Ala142, 1So(2d)395, 402.

Where a machinist at a plant left work because of picket lines established by the striking welders' union such leaving was a voluntary one on account of a trade dispute, within the meaning of the act and they were not entitled to unemployment compensation. Bodinson Mfg. Co. v. C., 109Pac(2d)(Cal)935.

Employees of a mill in Georgia whose wages would be directly affected by outcome of a strike called by certain employees, were not entitled to compensation during period of strike even though they voted against it and were prevented from going to work only by threats of pickets. Huiet v. Boyd, 64GaApp564, 13SE(2d)863.

Even though members of local district of United Mine Workers of America were not directly participating in labor dispute in Appalachian field, such members became involved in a labor dispute where they terminated pending contract by proper notice and did not report for work at expiration of agreement, though local operators association took no part in Appalachian negotiation. Dallas Fuel Co. v. Horne, 230 Iowa 1148, 300NW303.

Unemployment due to a lack of a contract is due to a labor dispute where failure to negotiate and enter into a contract is due to a labor dispute in another part of the country from which local unions may obtain benefit. Id.

Where action is taken by either a labor organization or employer that has a bearing upon a controversy as to wages, or conditions of employment, a labor dispute has developed. Id.

Since Kentucky Unemployment Compensation Act conforms to Mason's U. S. C. A., Title 42, §1103, it is presumed in absence of definition in Kentucky act that legislature intended to use term "labor dispute" in same sense as it is employed in Mason's U. S. C. A., Title 29, §152(9) and Title 29, §113(c). Barnes v. H., 285KyApp160, 146 SW(2d)(KyApp)929. Cert. den. 62SCR59.

Where coal miners refused to work at expiration of contract of employment until new contract was made, there was a "labor dispute" within meaning of Kentucky Unemployment Compensation Act, and miners were disqualified for benefits. Id.

An automobile manufacturing company with many plants so synchronized that stoppage of work in main plant would prevent production in other plants constituted one "establishment," and no benefits could be paid to employees in any plant for stoppage of work from a strike in the main plant, if they would directly or indirectly benefit if the union should be successful in negotiations. Chrysler Corp v. Smith, 297Mich438, 298NW87.

A "lockout" is the withholding of employment as a means of bringing employees to accept employer's terms, and there is no lockout where a temporary suspension of work occurs due to dangers of destruction or damage to which employer's property would otherwise be exposed and no measures are taken except such as are reasonably required to insure safety of the same during trouble between another employer and its employees. Magner v. Kinney, 2NW(2d)(Neb)689. See Dun. Dig. 9952a.

A "strike" is cessation of work by employees in an effort to get for employees more desirable terms. Id.

Employee who did not participate in a labor dispute which interrupted production or who was not a production worker, held not disqualified from receiving unemployment compensation. Kleckhefer Container Co. v. U., 13Atl(2d)(NJ)646, 648.

Where, during the time that a mill was closed because of a labor dispute, the employers notified the employees that the mill would reopen on a certain date and that those who returned on that date would be reemployed, employees failing to return on day that the mill reopened, because of the labor dispute which still continued, were entitled to benefits, if eligible, for the period during which the dispute lasted after the mill reopened. Steelman, 219NC306. 13SE(2d)544.

Fact that miners did not work while union was negotiating for a new contract, did not constitute a strike, and miners were entitled to compensation. United States Coal Co. v. U., 32NE(2d)(Ohio)763.

Closing of a mine during negotiations between employers and employees for a new agreement, was caused by a labor dispute within Tennessee law. Block Coal & Coke Co. v. U., 148SW(2d)(Tenn)364.

Application to industrial commission for unemployment compensation is not an adversary proceeding, and decision of commission without a hearing does not deny due process where full hearing before appeal examiner is accorded, though commission later reverses decision of examiner. Employees of Utah Fuel Co. v. I., 104Pac(2d)(Utah)197.

Miners who had been laid off and who remained away from work when it was offered, because of a strike, were not entitled to unemployment compensation for the days when the employer was ready to offer work. Lion Coal Corp., 111Pac(2d)(Utah)797.

Where members of a union which called a strike received union permits to pass through picket lines to work, but were discharged by company because strike prevented their having enough to do, their unemployment was due to labor dispute and they were not eligible to unemployment compensation. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Employees engaged in same line of work as that of men who refused to pass through picket lines during a strike were disqualified from receiving unemployment compensation. Id.

Employees who were members of one union and who refused to pass through the picket lines formed by employees who were members of another union which had called a strike, were out of employment due to a labor

dispute and were not eligible for unemployment compensation. Id.

The mere fact that passage through picket lines was contrary to union conviction was not enough to make refusal of union members to pass through such lines involuntary. Id.

Employee who was a member of union which called a strike on account of a labor dispute, and who refused to pass through picket lines, was not entitled to unemployment compensation merely because of fact that after strike was called he obtained a job for a short time with another company. Id.

Where independent contractor had contracted to perform services for a company at which a strike was called on account of a labor dispute, and employees of such contractor refused to go through picket lines without a permit from union, unemployment of such employees was due to a labor dispute and they were not eligible for unemployment compensation. Id.

Employees of a lumber mill who went out on strike because of employer's refusal to negotiate with the union of which they were members were not entitled to compensation under the Washington Compensation Law. Id.

Where members of 2 competing unions were employed by company and one union called a strike when one of its members was discharged, and the other union called a strike when he was re-employed, the resulting stoppage of work was on account of a labor dispute, and the employees were not entitled to unemployment compensation. Deep River Timber Employees, 8Wash179, 111Pac (2d)575.

Two plants forty miles apart, synchronized in production of automobiles constituted a single "establishment," and a strike by an independent union in one plant which had effect of closing both plants was a strike "in" the establishment, and employees in neither plant were entitled to unemployment benefits. Spielmann v. I., 236Wis 240, 295NW1.

Where automobile manufacturer closed one plant and laid off employees there, and local union called out pickets to prevent removal of machinery and materials and manufactured parts to another plant, there was a "strike" arising out of a "labor dispute," though voluntary quitting of work was not involved, as affecting right of employees in other plants to unemployment compensation benefits. Id.

Suitable work exception as amended by Laws 1943, c. 659. Op. Atty. Gen. (885c-2), June 17, 1943.

Unemployment due to a labor or trade dispute. 25Minn LawRev956.

(E)(2).

Members of one union, who were locked out when mine shut down on account of employer's fear of violence after a strike was called by a competing union, were not unemployed on account of a labor dispute, and were entitled to unemployment compensation. Drummond, 1So (2d)(Ala)395.

E(2)(c).

The words "by an employer" inserted by amendment by Laws 1943, c. 650, do not change the effect or the application of the law. Op. Atty. Gen. (885c-2), June 17, 1943.

G. Reception of benefits from federal or other state laws.

Suitable work exception as amended by Laws 1943 c. 659. Op. Atty. Gen. (885c-2), June 17, 1943.

4337-28. Claims for benefits—How made.—A. Claims for benefits shall be made in accordance with such regulations as the director may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the director to each employer without cost to him.

B. (1) A deputy designated by the director, shall promptly examine the claims for benefits made pursuant to this section, and on the basis of the facts found, shall determine whether or not such claims are valid, and if valid, the weekly benefit amount payable, the maximum benefit amount payable during the benefit year, and the date the benefit year terminates. Notice of any determination, together with the reasons therefor, shall be promptly given the claimant and all other interested parties. Unless the claimant or such other interested party, parties, or employing unit or units within ten calendar days after the delivery of such notification, or within 12 calendar days after such notification was mailed to his last known address, files an appeal from such decision, such decision shall be final and benefits shall be paid or denied in accordance therewith. If an appeal is filed, benefits may be paid on the uncontested portion of the claim; benefits on the contested portion of the claim, if any, shall be paid after the final determination of the appeal. Provided, that, except in respect to cases arising under section 4337-27, Subsection F of this act, if an appeal tribunal affirms an initial determination or the director affirms a decision of the appeal tribunal, allowing benefits, such benefits shall be paid regardless of any appeal which may thereafter be taken, but if such decision is finally reversed, such benefits so paid shall not be considered in determining any individual employer's future contribution rate under section 4337-24, of this act.

C. Unless such appeal is withdrawn the date for hearing before an appeal tribunal shall be set and notice of such hearing shall be mailed to the last known address of all interested parties at least ten days prior to the date set for such hearing. Such hearing shall be a trial de novo, and, upon the evidence presented, the appeal tribunal shall affirm, modify, or set aside the initial determination. The director may, by regulation, provide for the taking of evidence or for the admission of sworn statements in case any interested party is unable to be present at the hearing. The parties shall be duly notified of such tribunal's decision, together with its reason therefor, which shall be deemed to be the final decision unless within ten days after the date of notification of such decision, further appeal is initiated pursuant to subsection E of this section.

D. In order to assure the prompt disposition of all claims for benefits, the director shall establish one or more impartial appeal tribunals consisting of a salaried examiner who shall serve as chairman, and two additional members, one of whom shall be a representative of employers and the other of whom shall be a representative of employees; each of the latter two members shall serve at the pleasure of the director and be paid a fee of not more than $10.00 per day of active service on such tribunal plus necessary expense. The director shall by regulation prescribe the procedure by which such appeal tribunals may hear and decide disputed claims, subject to appeal to the director. No person shall participate on behalf of the director in any case in which he is an interested party. The director may designate alternates to serve in the absence or disqualification of any member of an appeal tribunal. The chairman shall act alone in the absence or disqualification of any other member and his alternates. In no case shall a hearing before an appeal tribunal proceed unless the chairman of such tribunal is present. There shall be no charges, fees, transcript costs or other cost imposed upon the employee in prosecuting his appeal. All decisions of such tribunal complete as to the names of members of such tribunal shall be made available to the public in accordance with such regulations as the director may prescribe, except that names of interested parties may be deleted.

E. Within 12 days after the rendition thereof the director may, on his own motion, review such decision in the same manner as though one of the parties thereto had appealed therefrom. Upon the filing of an appeal from a decision of an appeal tribunal, the director may grant or deny such appeal. If the appeal is granted, the director may affirm, modify, or set aside the findings of fact or decision, or both, of the appeal tribunal on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The director may disregard the findings of fact of the appeal tribunal and examine the testimony taken and make such findings of fact as the evidence taken before the appeal tribunal may, in the judgment of the director, require, and make such decision as the facts so found by him may require. If the appeal is denied, the decision of the appeal tribunal may be reviewed in the Supreme Court in accordance with the provisions for judicial review of decisions of the director; and in the absence of such review, the decision of the appeal tribunal shall become final. The director shall notify the interested parties

of his findings and decision or of his denial of an appeal.

F. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with the regulations prescribed by the director for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules of procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing shall be reduced to writing, but need not be transcribed unless the disputed claim is further appealed.

G. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the director. Such fees shall be deemed a part of the expense of administering this act.

H. Any decision of the director in the absence of an appeal therefrom as herein provided, shall become final on the eleventh day after the date of mailing notice thereof to the party's last known address, or in absence of such mailing, upon the eleventh day after the delivery of such notice, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the director, as provided by this act. The director shall be deemed to be a party to any judicial action involving any such decision and may be represented in any such judicial action by any qualified attorney who is a regular salaried employee of the division of employment and security and has been designated by the director for that purpose, or, at the director's request, by the attorney general.

I. In any proceeding under this act before an appeal tribunal or the director a party may be represented by an agent or attorney, but no individual claiming benefits shall be charged fees of any kind in any proceeding under this act by the appeal tribunal, the director, or his representatives, or by any court or any officers thereof. Any individual claiming benefits in any proceedings before the director or his representatives or a court may be represented by counsel or other duly authorized agent, except that said agent in any court proceedings under this act must be an attorney at law; but no such counsel shall either charge or receive for such services more than an amount approved by the director and no fees shall be collected from an individual claiming benefits by any agent unless he is an attorney at law.

Any party in interest thereto may, within 30 days after the date of mailing of notice to him at his last known address of any order or decision of the director involving the merits of the case or any part thereof, have the same reviewed on certiorari by the Supreme Court on any of the following grounds:

(1) That the decision of the director sought to be reviewed is not in conformity with the terms of this law, or that the director committed any other error of law;

(2) That the findings of fact and the decision sought to be reviewed were unwarranted by the evidence. Any such party in interest so applying for such review, if he be other than a claimant for benefits, shall furnish a cost bond, pay to the division of employment and security a fee of $15.00, $5.00 of which shall be retained by said division and deposited in its administration fund, and $10.00 of which shall be paid to the clerk of the Supreme Court. The Supreme Court, on review taken under this section, shall have and take original jurisdiction and may reverse, affirm, or modify the decision reviewed, and enter such judgment as may be just and proper; and when necessary may remand the cause to the director for a new hearing or for further proceedings, with such directions as the court may deem proper. (As amended Apr. 28, 1941, c. 554, §7; Apr. 24, 1943, c. 650, §6.)

Employer was not a party to a proceeding by employees to secure benefits, especially where he had no notice of such application and no opportunity to be heard, and decisions awarding benefits were not binding upon him merely because he did not appeal therefrom, as affecting fixing of his rate of contribution to unemployment fund. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 9952k.

Division of Employment and Security could not fix an employer's rate of contribution to unemployment fund without at some stage of proceedings granting employer notice and an opportunity to be heard on merits, notwithstanding employer failed to give notice to division of separation of an employee from his employment as required by a regulation. Id. See Dun. Dig. 9952o.

California Unemployment Insurance Act containing complete administrative procedure with provisions for one origin of determination and two appeals, fulfilled every requisite of due process of law. Abelleira v. D., 109Pac(2d)(Cal)942.

A. How made.

Statement of receptionist employed in unemployment commission office that an applicant would have to make claim in another state, did not waive requirement that he should make claim and register for work within a certain time. Barlow, 2So(2d)(Miss)544.

B. Examination and initial determination of claims—appeal.

That the courts cannot interfere except to review decision of administrative board as to right to unemployment compensation, held not to deny due process of law. Abelleira v. D., 102Pac(2d)(Cal)329.

An unemployment compensation act is a nullity to extent that it places exclusive jurisdiction for issuance of a restraining or injunctive order in the commission, and court has jurisdiction to issue injunction restraining payment of award. Dallas Fuel Co. v. Horne, 230 Iowa 1148, 300NW303.

Employer, as contributor to unemployment fund, may appear and contest right of claimants to awards. Chrysler Corp. v. Smith, 297Mich438, 298NW87.

Act construed as requiring paying benefits awarded by referee and appealed without regard to decision of court on appeal denying compensation would be unconstitional as denying due process and encroaching on judiciary. Chrysler Corp., 301Mich351, 3NW(2d)302. Cert. den. 317 US635, 63SCR44. See Dun. Dig. 9952a.

Ruling letter of unemployment compensation commission to employer, designating his business as agricultural, was not controlling. Henry A. Dreer Inc. v. Commission, 127NJL149, 21Atl(2d)690.

Commissioner of New York has power to make a decision as to whether or not sales representatives are employees, and his decision may be appealed to the courts. Electrolux Corp. v. Miller, 286NY390, 36NE(2d)633.

Where the court, upon appeal of an employee of the Pennsylvania Unemployment service, ordered his reinstatement, he should appeal to the Board of Review to take proceedings to determine whether he was entitled to reimbursement for salary lost by his dismissal. Maloney v. Stahlnecker, 341Pa517, 19Atl(2d)162.

Employer receiving notice from employees that they would strike on a specified day was justified in notifying the employees not to come to work on such day. Employees of Utah Fuel Co. v. I., 104Pac(2d)(Utah)197.

Where certain employees, who were unemployed as a result of a strike called on account of a labor dispute were first determined by the Commission to be entitled to unemployment compensation, but with right to investigate labor dispute reserved, they could later be found ineligible for compensation upon facts not determined in first decision. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Notice of determination to employer which discloses wage credits earned from each other employer in base period would violate provision that information obtained from an employing unit shall be confidential. Op. Atty. Gen., (885), May 26, 1941.

C. Hearing.

Where the Pennsylvania Board of Unemployment Compensation Review upon appeal reinstated employees of the unemployment compensation and employment service to their previous positions, employees were entitled to be reimbursed for loss of salary caused by their dismissal. Maloney v. Stahlnecker, 341Pa517, 19Atl(2d)162.

D. Appeal tribunals.

Findings of board on claim for benefits based upon transcript of evidence only were no more binding upon supreme court than those of district court. Phipps v. B., 107Pac(2d)(Idaho)148.

In the absence of statute appeal board may not render decisions in the nature of a declaratory judgment. Electrolux Corp., 26NYS(2d)164, 261AppDiv487.

E. Director's review of appeal tribunals decision.

Director of division of employment and security, as final administrative authority, has power to review evidence and make his own independent findings of fact and render a decision thereon, despite fact that findings contained in prior administrative determination of appeal tribunal had support in the evidence. Chellson v. State Div. of Emp. and Sec., 214M332, 8NW(2d)42. See Dun. Dig. 9952o, 9952q.

H. Appeal to Courts.

Action for a declaratory judgment as to constitutionality of 1939 amendment making act inapplicable to employers of less than eight outside municipalities of less than 10,000 population, brought by an employee who was still employed, was dismissed because not based on a just

justiciable controversy. Seiz v. C., 207M277, 290NW802. See Dun. Dig. 4988a.

Act does not impose any duty or obligation upon employer in favor of employee, and it is only against special funds, created by this act, that employee may assert any claim. Stevens v. M., 207M429, 291NW890.

It is not province of court to consider arguments and social policies or to question wisdom of scheme set up by California act. Robinson Mfg. Co. v. C., 109Pac(2d)(Cal)935.

Fact that act does not provide for an appeal from a decision of commission, except after payment of compensation under protest, does not mean that courts are without power to review a decision awarding unemployment benefits when it is alleged that commission has violated plain provisions of statute under which it functions. Id.

Party could not appeal to district court before making an appeal to commission or while such an appeal was pending, merely on ground that commission would decide adversely to such party if appeal was taken to it. Abelleira v. D., 109Pac(2d)(Cal)942.

The fact that an appeal from an order is made by an *improper method is not alone a ground for dismissal in* Illinois. Durkin v. Hey, 376 Ill 292, 33NE(2d)463.

The right of one employer to act for and on behalf of others was not conferred by provisions of act permitting appeals to courts from devisions of commission, where there was no community of interest in subject matter of controversy. Stearns Coal & L. Co. v. U., 147 SW(2d)(Ky)382.

On an appeal from a decision of Commissioner as to whether applicants are or are not entitled to unemployment compensation, a court shall review issues of law which have been previously raised, but administrative determination of facts is conclusive on court unless it *be wholly without evidential support or wholly dependent* upon a question of law, or clearly arbitrary or capricious. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Upon an initial determination, without reservation of labor dispute question, that an employee who was unemployed due to a strike was entitled to unemployment compensation, failure of employer to appeal within 5 days settled right of such employee to compensation. Id.

I. Appeal to Supreme court.

Order of court to produce company books and papers for inspection by Labor Department to determine whether company comes under Unemployment Compensation Law, was a final order such as could be reviewed by Supreme Court. Durkin v. Hey, 376 Ill 292, 33NE(2d)463.

Where facts are in dispute, or where reasonable minds may differ on inferences to be drawn from proven facts and circumstances, findings of commission are conclusive. Wolfe v. Ind. Com., 7NW(2d)(Iowa)799. See Dun. Dig. 9952j.

Where there is any evidence reasonably tending to sustain findings of director of employment and security they will not be disturbed on review in supreme court. Chellson v. State Div. of Emp. and Sec., 214M332, 8NW(2d)42. See Dun. Dig. 397b, 9952o.

Where evidence as to whether claimant for benefits was guilty of misconduct in connection with her work was in direct conflict, finding of director will not be disturbed by the court. Ley v. Doherty, 215M104, 9NW(2d)327. See Dun. Dig. 9952q.

Supreme court cannot disturb director's determination because it does not agree with it, and can only interfere when it appears that the director has not kept within his jurisdiction, or has proceeded upon an erroneous theory of the law, or unless his action is arbitrary and oppressive and unreasonable so that it represents his will not his judgment, or is without evidence to support it. Bowman v. Troy Launderers & Cleaners, 215M226, 9NW(2d)506. See Dun. Dig. 9952j.

It is not necessary that Mississippi commission pay a compensation award as ordered by circuit court before appealing decision to supreme court. Barlow, 1So(2d)(Miss)241.

Mississippi commission could appeal to the supreme court from a decision in circuit court reversing a decision of board of review. Id.

An employee who has established right to benefits before deputy and appeal tribunal is a necessary party defendant in an action for judicial review. Brown v. Haith, 140Neb717, 1NW(2d)825.

Commissioner of labor is an interested party in any action arising under law and may appeal same as any other party when he feels himself aggrieved, even if ap*peal be from an order denying benefits to a claimant and* from which claimant has not appealed. Woodmen of the World Life Ins. Soc. v. Olsen, 2NW(2d)(Neb)353.

Claimants could not appeal to Supreme Court of Virginia from a decision of Unemployment Compensation Commission where matter was entirely pecuniary and amount of each of their claims was less than $300. Blankenship v. U., 13SE(2d)(Va)409.

Unemployment compensation commissioner may appeal from decision of trial court holding that certain claimants are not entitled to unemployment compensation. Foy, 10Wash(2d)317, 116Pac(2d)545.

J. Representation by agent or attorney—Fees.

One appealing from order of Commissioner of Division of Unemployment Compensation is required to pay county clerk's docket fees as condition precedent to filing notice of appeal under the terms of the Washington Unemployment Compensation Act. State v. King County, 109Pac(2d)(Wash)291.

Upon a finding of the supreme court that trial court erred in reversing Commissioner's decision that certain applicants were not entitled to unemployment compensation, such applicants were not entitled to have attorney's fees paid out of the unemployment compensation administration fund. St. Paul & Tacoma Lumber Co., 110Pac(2d)(Wash)877.

Upon affirmance by Supreme Court of trial court's de*cision reversing ruling of Commissioner denying* compensation, applicant was entitled to have his attorney's fees allowed. Id.

4337-29. Period, election and termination of employer's coverage.—A. Except as provided in subsection C of this section, any employing unit which is or becomes an employer subject to this act within any calendar year shall be deemed to be an employer during the whole of such calendar year.

B. Except as otherwise provided in subsection C of this section, an employing unit shall cease to be an employer subject to this act as of the first day of January of any calendar year, only if it files with the director, prior to the first day of May of such year, a written application for termination of coverage, and the director finds that there were no 20 different days, each day being in a different week within the preceding calendar year, within which such employing unit employed one or more individuals in employment as provided in section 4337-22H, Mason's Supplement 1940, as amended by this act. For the purpose of this subsection, the two or more employing units mentioned in paragraph (2) or (3) or (4) of Section 4337-22F, Mason's Supplement 1940, as amended by this act shall be treated as a single employing unit.

C. (1) An employing unit, not otherwise subject to this act as an employer, which files with the director its written election to become an employer subject thereto for not less than two calendar years, shall, with the written approval of such election by the director, become an employer subject hereto to the same extent as all other employers, as of the date stated in such approval, and shall cease to be subject hereto as of the first day of January of any calendar year subsequent to such two calendar years, only, if at least 30 days prior to such first day of January, it has filed with the director a written notice to that effect.

(2) Any employing unit for which services that do not constitute employment as defined in this act are performed, may file with the director a written election that all such service performed by individuals in its employ in one or more distinct establishments or places of business shall be deemed to constitute employment for all the purposes of this act for not less than two calendar years. Upon the written approval of such election by the director, such services shall be deemed to constitute employment subject to this act from and after the date stated in such approval. Such services shall cease to be deemed employment *subject hereto as of the first day of January of any* calendar year subsequent to such two calendar years only if at least 30 days prior to such first day of January such employing unit has filed with the director a written notice to that effect.

(3) (a) The director shall approve all such written elections where, if such elections were not approved, the employing unit as a contractor or a subcontractor or otherwise, together with the individuals in his employ, under another employing unit, would be deemed employees of such other employing unit, as described in Section 4337-22E, Mason's Supplement 1940, as amended by this act.

(b) Any such employing unit which has heretofore filed such written elections, or which has heretofore paid to the director quarterly contributions and has made the wage reports required hereunder shall, in case the initial contributions and reports so paid and made have been accepted by the director and the money not refunded, be deemed to be elected employers hereunder, and the services performed by its employees shall be deemed employment, and such employing unit shall be liable for any contributions

which may now be due, or which were refunded after the payment and acceptance of the initial contribution. (As amended Act Apr. 28, 1941, c. 554, §8.)

(C)(2).

A municipality cannot be an "employing unit". Op. Atty. Gen., (885), Oct. 6, 1939.

4337-30. Administration.—A. The director shall administer this act and shall appoint such officers and employees as may be necessary for the administration thereof. The salary of the director shall be $6000 per annum payable semi-monthly.

B. Not later than the first day of August of each year, the director shall submit to the governor a report covering the administration and operation of this act during the preceding calendar year and shall make such recommendations for amendments to this act as the director deems proper. Whenever the director believes that a change in contribution or benefit rates will become necessary to protect the solvency of the fund, he shall promptly so inform the governor and the legislature and make recommendations with respect thereto.

C. The director is hereby authorized to adopt, amend or rescind such rules and regulations as may be necessary for the administration of this act.

(1) General and special rules may be adopted, amended, or rescinded by the director which rules shall become effective ten (10) days after the publication of the same in one or more newspapers of general circulation in this state, provided that any employer, employee or other person whose interest is or may be affected thereby may object to any such rule within ten (10) days after publication thereof by filing with the director a petition setting forth the grounds of objection to said rule and request for hearing thereon, whereupon a hearing shall thereafter be had before the director at a time and place designated by the director after due notice of said hearing has been served by the director or duly authorized person, upon the objecting party or parties not less than five (5) days before said hearing.

Regulations may be adopted, amended, or rescinded by the director and shall become effective in the manner and at the time prescribed by the director; provided, however, that the director shall provide for reasonable notice of all regulations affecting employers and employees, and provided further, that any person affected by a regulation of the director may, within ten days after the promulgation thereof, petition the director for reconsideration of said regulation; the director shall then provide a reasonable opportunity to the petitioner for a hearing on said reconsideration.

D. The director shall cause to be printed for distribution to the public the text of this act, the director's regulations and general rules and his annual reports to the governor and any other material the director deems relevant and suitable.

E. (1) Subject to the provision of the state civil service act and to the other provisions of this act, the director is authorized to appoint, and prescribe the duties and powers of such officers, accountants, attorneys, experts, and other persons as may be necessary in the performance of his duties under this act. The director may delegate to any such person so appointed such power and authority as he deems reasonable and proper for the effective administration of this act, and may in his discretion bond any person handling moneys or signing checks hereunder. The director is authorized to adopt such regulations as he deems necessary to meet personnel standards promulgated by the Social Security Board pursuant to the Social Security Act, as amended, and the Act of Congress entitled "An act to provide for the establishment of a national employment system and to cooperate with the states in the promotion of such system and for other purposes" approved June 6, 1933, as amended.

The attorney general shall appoint an assistant attorney general, to be in addition to the number now authorized by law, who shall be the attorney and the chief counsel for the division of employment and security. Such assistant attorney general shall receive the same salary as the other assistant attorneys general, but shall devote his entire time to said division. Said assistant attorney general shall have the power to act for and represent the attorney general in all matters in which the attorney general is authorized to act for the director by this act. The compensation and all expenses and disbursements of such assistant attorney general shall be paid from the moneys appropriated to and for the use of the director.

(2) (a) No officer or employee engaged in the administration of this act shall use his official authority to influence for the purpose of interfering with an election or affecting the results thereof. No person engaged in the administration of this act who holds a position in the state classified service pursuant to provisions contained in the state civil service act, while retaining the right to vote as he pleases and to express privately his opinion on all political subjects, shall take an active part in political management or campaigns.

(b) No officer or employee engaged in the administration of this act shall solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription, on contribution for any political purpose whatever for any person.

(c) No officer or employee engaged in the administration of this act shall, for political purposes, furnish or disclose, or aid or assist in furnishing or disclosing, any list or names of persons obtained in the administration of this act, to a political candidate, committee, campaign manager, or to any person for delivery to a political candidate, committee, or campaign manager, and it shall be unlawful for any person to receive any such list or names for political purposes.

F. The director shall appoint a state advisory council and may appoint such local advisory councils as he deems advisable, composed in each case of an equal number of employer and employee representatives who shall be selected because of their vocation, employment, or affiliation, and of such members representing the general public as the director may designate. Such councils shall aid the director in formulating policies and discussing problems relating to the administration of this act and in assuring impartiality and freedom from political influence in the solution of such problems. The members of such advisory councils shall serve at the pleasure of the director and may be paid a fee of not more than $10.00 per day for active service on such councils in lieu of remuneration for such service and subsistence and shall be reimbursed for any necessary traveling expenses at the rate of five cents per mile.

G. The director is authorized to take all appropriate steps to reduce and prevent unemployment; to encourage and assist in the adoption of practical methods of vocational training, retraining, and vocational guidance; to investigate, recommend, advise and assist in the establishment and operation, by municipalities, counties, school districts, and the state, of reserves for public works to be used in times of business depression and unemployment; to promote the reemployment of unemployed workers throughout the state in every other way that may be feasible; and to these ends to carry on and publish the results of investigations and research studies.

H. (1) Each employing unit shall keep true and accurate work records for such periods of time and containing such information as the director may prescribe. Such records shall be open to inspection, audit and verification, and be subject to being copied by any authorized representative of the director at any reasonable time and as often as may be necessary. The director, appeal referee, chairman of an appeal

tribunal, or any other duly authorized representative of the director, may require from any employing unit any sworn or unsworn reports, with respect to persons employed by it, which the director, appeal referee, chairman of an appeal tribunal, or any other duly authorized representative of the director deems necessary for the effective administration of this act, provided, however, that quarterly contribution wage and report forms shall be made to correspond whereever possible with the reports required from employers under the federal insurance contributions act, so that such state forms may be prepared as duplicates of such federal forms, except that no employer shall be permitted to submit a duplicate report which is not thoroughly legible.

(2) The director may cause to be made such summaries, compilations, photographs, duplications, or reproductions of any records, reports, or transcripts thereof as he may deem advisable for the effective and economical preservation of the information contained therein, and such summaries, compilations, photographs, duplications or reproductions, duly authenticated, shall be admissible in any proceeding under this act if the original record of records would have been admissible therein.

(3) Notwithstanding any inconsistent provisions elsewhere, the director may provide for the destruction or disposition of any records, reports, transcripts, or reproductions thereof, or other papers in his custody, which are more than four years oold, the preservation of which is no longer necessary for the establishment of contribution liability or benefit rights or for any purpose necessary to the proper administration of this act, including any required audit thereof, provided, that the director may provide for the destruction or disposition of any record, report, or transcript, or other paper in his custody which has been photographed, duplicated, or reproduced in the manner provided in the above subsection. (As amended Apr. 28,. 1941, c. 554, §9; Apr. 24, 1943, c. 650, §7.)

I. (1) In the discharge of the duties imposed by this act, the director, the chairman of an appeal tribunal, appeal referee, or any duly authorized representative of the director shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of this act.

(2) Witnesses subpoenaed pursuant to this subsection or any other section of this act shall be allowed fees at a fixed rate prescribed by regulation by the director, which fees need not be paid in advance of the time of giving of testimony, and such fees of witnesses so subpoenaed shall be deemed part of the expense of administering this act.

(3) In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the director, chairman of an appeal tribunal, or referee, or any duly authorized representative of the director, shall have jurisdiction to issue to such person an order requiring such person to appear before the director, the chairman of an appeal tribunal referee, or any duly authorized representative of the director, there to produce evidence if so ordered or there to give testimony relative to the matter under investigation or in question; any failure to obey such order of the court may be punished by said court as a contempt thereof.

J. No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the director, the chairman of an appeal tribunal, referee, or any duly authorized representative of the director, or in obedience to the subpoena of any of them in any cause or proceeding before the director, an appeal tribunal, referee, or any duly authorized representative of the director on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

K. (1) In the administration of this act, the director shall cooperate to the fullest extent consistent with the provisions of this act, with the Social Security Board, created by the Act of Congress, entitled the Social Security Act, as amended; shall make such reports in such form and containing such information as the Social Security Board may from time to time require, and shall comply with such provisions as the Social Security Board may from time to time find necessary to assure the correctness and verification of such reports; and shall comply with regulations prescribed by the Social Security Board governing the expenditures of sums as may be allotted and paid to this state under Title III of the Social Security Act for the purpose of assisting in the administration of this act.

(2) If sections 303 (a) (5) of Title III of the Social Security Act and sections 1603 (a) (4) of the Internal Revenue Code are amended to permit a state agency to use, in financing administrative expenditures incurred in carrying out its employment security functions, some part of the monies collected or to be collected under the state unemployment compensation law, in partial or complete substitution for grants under said Title III, in that event this act shall, by the director's proclamation and rules to be issued with the governor's approval, be modified in the manner and to the extent and within the limits necessary to permit such use by the director under this act; and such modifications shall become effective on the same date as such use becomes permissible under such federal amendments.

L. Except as hereinafter otherwise provided, information obtained from any employing unit or individual pursuant to the administration of this act, and from any determination as to the benefit rights of any individual shall be held confidential and shall not be disclosed or be open to public inspection in any manner revealing the individual's or employing unit's identity. Any claimant or other interested party (or his legal representative) shall be supplied with information from the records of the Division of Employment and Security, to the extent necessary for the proper presentation of his claim, contention or refutation of any claim in which he is an interested party in any proceeding under this act with respect thereto. Subject to such restrictions as the director may by regulation prescribe, such information may be made available to any agency of this or any other state, or any federal agency charged with the administration of an employment and security law or the maintenance of a system of public employment offices, or the Bureau of Internal Revenue of the United States Department of the Treasury, and information obtained in connection with administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service. Upon request, therefor, the director shall furnish to any agency of the United States charged with the administration of public works or assistance through public employment, and may furnish to any state agency similarly charged, the name, address, ordinary occupation, and employ-

ment status of each recipient of benefits and such recipient's rights to further benefits under this act. The director may request the Comptroller of the Currency of the United States to cause an examination of the correctness of any return or report of any national banking association rendered pursuant to the provisions of this act, and may in connection with such request, transmit any such report or return to the Comptroller of the Currency of the United States as provided in section 1606 (c) of the Federal Internal Revenue Code.

All letters, reports, communications, or any other matters, either oral or written, from an employer or his workers to each other or to the director or any of his agents, representatives, or employees, which shall have been written or made in connection with the requirements and administration of this act or the regulations thereunder, shall be absolutely privileged and shall not be made subject matter or basis for any suit, for slander or libel in any court of this state.

M. (1) The director may, upon his own motion or upon the written application of an employing unit, and after notice of hearing as hereinafter provided, make findings of fact, and on the basis thereof, determinations with respect to whether an employing unit constitutes an employer and whether services performed for, or in connection with the business of any employing unit constitutes employment for such employing unit.

(2) The director shall designate one or more representatives, herein referred to as referees, to conduct hearings upon such matter, at which hearings the employing unit, any individual claiming to be or claimed to be an employee of such employing unit, and any other individual having information pertinent to the issues, shall be entitled to appear, introduce evidence, and be heard in person, by counsel, or by any other representative of their own selection. The referee shall fix a time and place within this state for such hearing and shall give the employing unit written notice thereof, by registered mail, not less than ten days prior to the time of such hearing. In the discharge of the duties, imposed by this section, the referee shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with the subject matter of such hearing. The written report of any employee of the division of employment and security, made in the regular course of the performance of such employee's duties, shall be competent evidence of the facts therein contained and shall be prima facie correct, unless refuted by other credible evidence.

(3) Upon the conclusion of such hearing, the referee shall serve upon the employing unit by registered mail proposed findings of fact and decision in respect thereto. The employing unit shall have 10 days following the mailing of such proposed findings and decision within which to file with the referee exceptions thereto and argument thereon. Opportunity for oral argument shall be allowed at the discretion of the referee, on his own motion or at the request of the employing unit and, if allowed, shall be given by not less than five days' notice to the employing unit. Following the expiration of the period within which to file exceptions and argument in respect to the proposed findings and decision or the conclusion of oral argument, if such has been allowed, the referee shall render a decision in the matter. If such decision is that the employing unit constitutes an employer, such decision shall show the period or periods for which such employer is liable for the payment of contributions and may also include, but need not necessarily do so, a determination of the amount of such contributions, together with interest, due and unpaid. The decision of the referee, together with his findings of fact and reasons in support thereof, shall become final unless within 10 days after the mailing by registered mail a copy thereof to the employing unit an appeal is filed with the director or unless the director, within twelve days after the mailing of such decision, on his own motion orders the matter certified to him for review. Appeal from and review by the director of the decision of the referee shall be had in the manner provided by regulation. The director may without further hearing affirm, modify, or set aside the findings of fact or decision, or both, of the referee on the basis of the evidence previously submitted in the case, or direct the taking of additional evidence. The director may disregard the findings of fact of the referee and examine the testimony taken and make such findings of fact as the evidence taken before the referee may, in the judgment of the director, require, and make such decision as the facts so found by him may require. The director shall notify the employing unit of his findings and decision by registered mail and notice of such decision shall contain a statement setting forth the cost of certification of the record in the matter. The decision of the director shall become final unless judicial review thereof is sought as provided by this act. Any interested party to a proceeding before a referee or the director may obtain a transcript of the testimony taken before the referee upon payment to the director of the cost of such transcript to be computed at the rate of ten cents per 100 words.

(4) The district court of the county wherein the hearing before the referee was held shall, by writ of certiorari to the director, have power to review all questions of law and fact presented by the record. The court may accept newly discovered evidence and may try the matter de novo. Such action shall be commenced within 20 days of the service by registered mail of notice of the decision of the director upon the employing unit affected thereby. Such proceedings before the courts shall be given precedence over all other civil cases. The director shall not be required to certify the record to the district court unless the party commencing such proceedings for review, as provided above, shall pay to the director the cost of certification of the record computed at the rate of ten cents per 100 words less such amount as may have been previously paid by such party for a transcript. It shall be the duty of the director upon receipt of such payment to prepare and certify to the court a true and correct typewritten copy of all matters contained in such record. The costs so collected by the director shall be deposited by him in the employment and security administration fund provided for in section 4337-33 of this act. The court may confirm or set aside the decision and determination of the director. If the decision and determination is set aside and the facts found in the proceedings before the referee are sufficient, the court may enter such decision as is justified by law, or may remand the cause to the director for further proceedings and may state the questions requiring further hearing, and give such other instructions as may be proper.

(5) A final decision of the director or referee, in the absence of appeal therefrom, shall be conclusive for all the purposes of this act except as herein otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for contributions. A final decision of the director or referee may be introduced in any proceeding involving a claim for benefits.

(6) In the event of a final decision of the director or referee determines the amount of contributions due under this act, then, if such amount, together with interest and penalties, is not paid within 30 days after such decision, the provisions of section 4337-34 C shall apply; and the director shall proceed thereunder, substituting a certified copy of the final decision in place of the contribution report therein pro-

vided. (As amended Apr. 28, 1941, c. 554, §9; Apr. 24, 1943, c. 650, §7.)

Substantive portions of statute cannot be changed by rule of commission. Bielke v. A., 206M308, 288NW584. See Dun. Dig. 1600.

A. Industrial commission.

Member of national guard did not vacate his office of chairman and executive director of Texas Unemployment Compensation Commission under state or federal law when called into active military service of the United States and appointed an officer therein. Carpenter v. S., 145SW(2d)(Tex)562.

C. Rules and regulations.

In addition to being consistent with law, regulations to be valid must be reasonable. Juster Bros. v. Christgau, 214M108, 7NW(2d)501. See Dun. Dig. 9952o.

Director cannot adopt a rule prescribing that an unemployed individual in order to remove disqualification must have been employed in subsequent employment for at least a period of one week and then unemployed through no fault of his own. Op. Atty. Gen., (885), Sept. 25, 1939.

Rules and regulations may not be inconsistent with act, but a valid regulation has force and effect of law. Op. Atty. Gen., (885d-1), March 1, 1940.

E. Personnel.

Dismissal of an official of the Unemployment Compensation Commission by abolishing his position and creating another was invalid. Donaldson v. Sisk, 57Ariz 318, 113Pac(2d)860.

Civil service employees of unemployment compensation board discharged after serving 11 months on ground that their education and experience did not meet minimum requirements were entitled to reinstatement, but reimbursement for loss of salary is discretionary with board. Maloney v. U., 15Atl(2d)(Pa)407; Halteman v. U., 15Atl(2d)(Pa)408.

Where act provides that any employee in unemployment compensation department who is given notice of furlough shall be entitled to appeal within 10 days, he cannot appeal 4 months after notice though he did not acquire knowledge of reason justifying appeal until 10 days statutory period had elapsed. Ehrman v. U., 16Atl (2d)(Pa)428.

New unemployment compensation board of review had no authority to change classification of employee appointed by civil service examination and classified by former board. Id.

Where board has acted in matter involving its discretion in respect to selection of civil service employees, its actions cannot be set aside by subsequent board, in absence of fraud, misrepresentation or misconduct. Ryan v. U., 17Atl(2d)(Pa)664.

Evidence that employee had willfully made a false statement in regard to amount of his education, in order to increase his civil service rating, justified dismissing him from service. Force v. U., 18Atl(2d)(Pa)81.

Pennsylvania board of review had no authority to dismiss an employee of the unemployment service who had served more than the probationary time, on the ground that his application showed lack of qualifications for employment, where the Board had previously approved application and appointed him to a civil service position. Maloney v. Stahlnecker, 341Pa517, 19Atl(2d)162.

A war veteran having permanent employment status under division of unemployment compensation and who obtained leave of absence and filed as a candidate for office prior to effective date of civil service law did not lose his status of permanent employment, though he continued his candidacy for office after effective date of that act, without filing of charges and a hearing. Op. Atty. Gen., (644), Oct. 18, 1939.

F. Advisory councils.

A member of the legislature may serve as a member of the advisory council. Op. Atty. Gen. (885b), June 16, 1943.

H. Administration—Work records—Reports.

Commissioner administering New Hampshire law was empowered to require reports deemed by him necessary for effective administration of act to be furnished to him by employer. State v. Proctor, 18Atl(2d)(NH)753.

Notice of determination to employer which discloses wage credits earned from each other employer in base period would violate provision that information obtained from an employing unit shall be confidential. Op. Atty. Gen., (885), May 26, 1941.

Original documents of division might be legally destroyed after being preserved by photography. Op. Atty. Gen. (885b), Oct. 13, 1943.

K. Administration.

Failure of state unemployment compensation law to comply with the federal statute does not affect its validity, but only the question of federal aid. Donaldson v. Sisk, 57Ariz318, 113Pac(2d)860.

L. Information, confidential.

Disqualifying issues cannot be properly determined on basis of confidential information not disclosed to claimant. Op. Atty. Gen. (885c-2) Oct. 9, 1942.

M. Director, powers.

Findings of facts by commission are conclusive and binding upon court if supported by any confident evidence. J. M. Willis B. & B. Shop, 15SE(2d)(NC)4.

Upon failure of claimant for compensation to appeal from court's decision that certain partnership and corporation were not a single employing unit, matter became res adjudicata and could not be appealed by unemployment commission. Mitchell, 220NC65, 16SE(2d)476.

Unemployment compensation commission may hold hearing to determine whether corporation is liable for unemployment compensation tax without having first determined that an employer employee relationship existed. Farwest Taxi Service, 114Pac(2d)(Wash)164.

4337-31. Reciprocal benefit arrangements. — A. The director is hereby authorized to enter into reciprocal arrangements with the appropriate and duly authorized agencies of other states or of the federal government, or both, provided authority is granted such agencies to exclude from employment in their state, whereby:

1. Service performed by an individual for a single employing unit for which service is customarily performed in more than one state shall be deemed to be service performed entirely within any one of the states

(a) In which any part of such individual's service is performed, or

(b) In which such individual has his residence, or

(c) In which the employing unit maintains a place of business; provided, there is in effect, as to such service, an election, approved by the agency charged with the administration of such state's employment security law, pursuant to which all the service performed by such individual for such employing unit is deemed to be performed entirely within such state; provided further that no single employing unit within the meaning of this act may effect the transfer of coverage of more than seven individuals from this state or one per cent of the total number of individuals in its employ both within and without this state, whichever effects the transfer of the greater number of workers.

(2) Potential rights to benefits accumulated under the employment and security laws of one or more states or under one or more such laws of the federal government, or both, may constitute the basis for the payment of benefits through a single appropriate agency under terms which the director finds will be fair and reasonable as to all affected interests and will not result in any substantial loss to the fund;

(3) Wages or services, upon the basis of which an individual may become entitled to benefits under an employment and security law of another state or of the federal government, shall be deemed to be wages for insured work for the purpose of determining his rights to benefits under this act, and wages for insured work, on the basis of which an individual may become entitled to benefits under this act shall be deemed to be wages or services on the basis of which unemployment compensation under such law of another state or of the federal government is payable, but no such arrangement shall be entered into unless it contains provisions for reimbursements to the fund for such of the benefits paid under this act upon the basis of such wages or service, and provisions for reimbursements from the fund for such of the compensation paid under such other law upon the basis of wages for insured work, as the director finds will be fair and reasonable as to all affected interests; and,

(4) Contributions due under this act with respect to wages for insured work shall for the purpose of section 4337-34 of this act be deemed to have been paid to the fund as of the date payment was made as contributions therefor under another state or federal employment and security law, but no such arrangements shall be entered into unless it contains provisions for such reimbursement to the fund of such contributions and the actual earnings thereon as the director finds will be fair and reasonable as to all affected interests.

B. Reimbursements paid from the fund pursuant to paragraph (3) of subsection A of this section shall be deemed to be benefits for the purposes of sections 4337-23 and 4337-25B of this act. The director is authorized to make to other state or federal agencies and to receive from such other state or federal agencies, reimbursements from or to the fund, in accord-

ance with arrangements entered into pursuant to subsection A of this section.

C. The administration of this act and of other state and federal employment and security and public employment service laws will be promoted by cooperation between this state and such other states and the appropriate federal agencies in exchanging services, and making available facilities and information, the director is therefore authorized to make such investigation and audits, secure and transmit such information, make available such services and facilities and exercise such of the other powers provided herein with respect to the administration of this act as he deems necessary or appropriate to facilitate the administration of any such employment and security or public employment service law, and in like manner, to accept and utilize information, services and facilities made available to this state by the agency charged with the administration of any such other employment and security or public employment service law.

D. To the extent permissible under the laws and Constitution of the United States, the director is authorized to enter into or cooperate in arrangements whereby facilities and services provided under this act and facilities and services provided under the employment and security law of any foreign government, may be utilized for the taking of claims and the payment of benefits under the employment and security law of this state or under a similar law of such government.

E. The director shall fully cooperate with the agencies of other states, and shall make every proper effort within its means, to oppose and prevent any further action which would in its judgment tend to effect complete or substantial federalization of state unemployment compensation funds or state employment security programs. (As amended Apr. 28, 1941, c. 554, §10; Apr. 24, 1943, c. 650, §8.)

4337-32. Commission shall establish and maintain free public employment offices.—A. A state employment service is hereby established in the Division of Employment and Security. The director in the conduct of such service shall establish and maintain free public employment offices, in such number and in such places as may be necessary for the proper administration of this act and for the purpose of performing such functions as are within the purview of the act of Congress entitled "An Act to provide for the establishment of a national employment system for the co-operation with the states in the promotion of such system and for other purposes." Approved June 6, 1933, as amended. The provisions of said act of Congress are hereby accepted by this state, and the Division of Employment and Security is hereby designated and constituted the agency of this state for the purposes of said act.

All moneys received by this state under said act of Congress shall be paid into the employment and security administration fund, and shall be expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the director is authorized to enter into agreements with the Railroad Retirement Board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of this act, and may enter into agreements with any political subdivision of this state or with any private organization or person, and as a part of any such agreements, may accept moneys, services, or quarters as a contribution to the maintenance of the state system of public employment offices or as reimbursement for services performed. All moneys received for such purposes shall be paid into the employment and security administration fund. The director may establish auxiliary employment offices and may, notwithstanding any other law to the contrary, employ individuals on a part-time or temporary basis to perform services in such offices and for related purposes, compensate such individuals for such services, and reimburse such individuals for necessary expenses incurred by them in the performance of such services. Such individuals shall serve at the pleasure of the director, and the functions performed by them shall have the same force and effect as though the same were performed by employees of the division of employment and security. (As amended Act Apr. 28, 1941, c. 554, §11.)

4337-32a and 4337-32b. [Repealed.]
Repealed. Laws 1941, c. 554.

4337-33. Unemployment compensation administration fund.—A. There is hereby created in the state treasury a special fund to be known as the employment and security administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the director for expenditure in accordance with the provisions of this act, and shall not lapse at any time or be transferred to any other fund. All moneys in this fund which are received from the federal government or any agency thereof or which are appropriated by this state for the purposes described in section 4337-32, Mason"s Supplement 1940, as amended by this act, shall be expended solely for the purposes and in the amounts found necessary by the Social Security Board for the proper and efficient administration of this act. The fund shall consist of all moneys appropriated by this state, all moneys received from the United States of America, or any agency thereof, including the Social Security Board; and all moneys received from any other source, for such purpose, and shall also include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the employment and security administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of this act. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special funds in the state treasury except that moneys in this fund shall not be commingled with other state funds, but shall be maintained in a separate account on the books of a depositary bank. Such moneys shall be secured by the depositary in which they are held to the same extent and in the same manner as required by the general depositary law of the state, and collateral pledged shall be maintained in a separate custody account. The state treasurer shall be liable on his official bond for the faithful performance of his duties in connection with the employment and security administration fund provided for under this act. Such liability on the official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on the effective date of this provision, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the employment and security administration fund shall be deposited in said fund.

B. If any moneys received after June 30, 1941, from the Social Security Board under Title III of the Federal Social Security Act, or any unencumbered balances in the employment and security administration fund as of that date, or any moneys granted after that date to the state pursuant to the provisions of the Wagner-Peyser Act, or any moneys made available by this state or its political subdivisions and matched by such moneys granted to this state pursuant to the provisions of the Wagner-Peyser Act, are found by the

Social Security Board, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the Social Security Board for the proper administration of this act, it is the policy of this state that such money shall be replaced by moneys appropriated for such purpose from the general funds of this state to the employment and security administration fund for expenditure as provided in subsection A of this section. Upon receipt of notice of such a finding by the Social Security Board, the director shall promptly report the amount required for such replacement to the governor and the governor shall at the earliest opportunity, submit to the legislature a request for the appropriation of such amount. This subsection shall not be construed to relieve this state of its obligation with respect to funds received prior to July 1, 1941, pursuant to the provisions of Title III of the Social Security Act. (As amended Act Apr. 28, 1941, c. 554, §12.)

(A).

Duties with reference to deposit of funds in employment and security administration fund. Op. Atty. Gen. (454e), Sept. 16, 1943.

4337-34. Collection of contributions.—A. If contributions are not paid on the date on which they are due and payable, as prescribed by the director, the whole or part thereafter remaining unpaid shall bear interest at the rate of one per centum per month from and after such date until payment is made to the division of employment and security, provided however that after any contribution has become delinquent for a period of 12 months thereafter interest thereon shall be computed at the rate of six per centum per annum. In computing interest for any period of less than a full month, the rate shall be one-thirtieth of the per centum of interest applicable for each day or fraction thereof. Contributions, if mailed, shall be deemed to have been paid on the date of mailing as indicated by the postmark on the cover thereof. Interest collected pursuant to this subsection shall be paid into the unemployment compensation fund.

B. **Collection of contributions—Failure to make report.**—(1) Any employer who knowingly fails to make and submit to the division of employment and security any report of wages paid by or due from him for insured work in the manner and at the time such report is required by regulations prescribed by the director shall pay to the division of employment and security for the fund an amount equal to one per cent of contributions accrued during the period for which such report is required, for each month from and after such due date until such report is properly made and submitted to the division of employment and security. In no case shall the amount of the penalty imposed hereby be less than $5.00 except that in cases where the contribution is less than $10.00 the penalty shall be $1.00. Any employing unit which fails to make and submit to the director any report, other than one of wages paid or payable for insured work, as and when required by the regulations of the director, shall be subject to a penalty in the sum of $10.00 payable to the division of employment and security for the unemployment compensation fund. All such penalties shall be in addition to interest and any other penalties provided for by this act and shall be collected by civil action as hereinafter provided.

(2) If any employing unit required by this chapter to make and submit contribution reports shall fail to do so within the time prescribed by this chapter or by regulations under the authority thereof, or shall make, wilfully or otherwise, an incorrect, false or fraudulent contribution report, he shall, on the written demand of the director, make such contribution report, or corrected report, within 10 days after the mailing of such written demand and at the same time pay the whole contribution, or additional contribution, due on the basis thereof. If such employer shall fail within that time to make such report, or corrected report, the director shall make for him a report, or corrected report, from his own knowledge and from such information as he can obtain through testimony, or otherwise, and assess a contribution on the basis thereof, which contribution, plus penalties and interest which thereafter accrued (less any payments theretofore made) shall be paid within 10 days after the director has mailed to such employer a written notice of the amount thereof and demand for its payment. Any such contribution report or assessment made by the director on account of the failure of the employer to make a report or corrected report shall be prima facie correct and valid, and the employer shall have the burden or establishing its incorrectness or invalidity in any action or proceeding in respect thereto. Whenever such delinquent employer shall file a report or corrected report, the director may, if he finds it substantially correct, substitute it for the director's report. If an employer has failed to submit any report of wages paid, or has filed an incorrect report, and the director finds that such noncompliance with the terms of this act was not wilfull and that such employer was free from fraudulent intent, the director shall limit the charge against such employer to the period of the year in which such condition has been found to exist and for the preceding calendar year.

C. If, after due notice, any employer defaults in any payment of contributions or interest due thereon or penalties for failure to file returns and other reports as and when required by the provisions of this act or by any rule or regulation of the director, the amount due shall be collected by civil action in the name of the State of Minnesota, and any money recovered on account thereof shall be credited to the employment and security fund provided for under the provisions of this act. This remedy shall be in addition to such other remedies as may be herein provided or otherwise provided by law, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions, interest due thereon, or penalties from an employer shall be heard by the court at the earliest possible date. No action for the collection of contributions or interest thereon shall be commenced more than four years after the contributions have been reported by the employer or determined by the director to be due and payable. In any action herein provided for, judgment shall be entered against any defendant in default for want of answer or demurrer, for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

No action shall be commenced for the collection of contributions with respect to wages paid for services performed prior to the effective date of a subsequent provision of law enacted prior to July 1, 1941, excluding such service from coverage under this act.

D. The director, or any officer or employee of the state division of employment and security authorized in writing by the director, is authorized to enter into an agreement in writing with any employer relating to the liability of such employer in respect to delinquent contributions, interest, penalties, and costs; provided however, that such agreement shall not be made in respect to liability for the principal sum of delinquent contributions unless the same has been delinquent for a period of at least four years prior to the making of such agreement. The director may also enter into an agreement, with respect to liability for delinquent contributions, interest, penalties and costs, with any employer who has never paid any contributions to the fund and such failure to pay contributions was, in the opinion of the director, due to an honest belief on the part of such employer that he was not covered by this act. Any agreements made under this subsection shall be subject to the approval of the attorney general and a summary of any such agreements shall be published in the next succeeding annual report of the director to the governor.

If such agreements are approved by the director and the attorney general, the same shall be final and conclusive; and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact, the case shall not be reopened as to the matters agreed upon or the agreement modified by any officer, employee or agent of the state; and, in any suit, action or proceeding such agreement, or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, shall not be annulled, modified, set aside or destroyed. (As amended Apr. 28, 1941, c. 554, §13; Apr. 24, 1943, c. 650, §9.)

E. If not later than three years after the date of payment of any amount as contributions or interest thereon, an employer who has made such payment shall make application for an adjustment thereof in connection with subsequent contribution payments, or for a refund thereof because such adjustment cannot be made, and if the director shall determine that payment of such contributions or interest or any portion thereof was erroneous, the director shall allow such employer to make an adjustment thereof, without interest, in connection with subsequent contribution payments by him, or if such adjustment cannot be made, the director shall refund from the fund, without interest, the amount erroneously paid. For like cause and within the same period, adjustment or refund may be so made on the director's own initiative.

F. Nothing in this act, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and regulations in effect at the time such moneys were paid. (As amended Act Apr. 28, 1941, c. 554, §13; Apr. 24, 1943, c. 650, §9.)

(A).

Delinquent contributions which are collected on or after April 29, 1941, will bear interest at rate prescribed in this section, as amended by Laws 1941, c. 554, §13. Op. Atty. Gen., (885), May 5, 1941.

Employers who employed less than eight during year 1940, whose payrolls were not subject to excise tax under federal law, who terminated business during 1940 and from whom accrued taxes were collected under Reg. 3G are entitled to refund of contributions. Op. Atty. Gen. (885d-1), Dec. 27, 1941.

(B).

Amended. Laws 1943, c. 650, §9. See above text.

The provision that the director shall limit the "charge" refers to matters of penalty, and not contributions. Op. Atty. Gen. (885d-1), Sept. 17, 1943.

(C).

Amended. Laws 1943, c. 650, §9. See above text.

(D).

Amended. Laws 1943, c. 650, §9. See above text.

4337-35. Protection of rights and benefits.—A. Any agreement by an individual to waive, release or commute his rights to benefits or any other rights under this act shall be void. Any agreement by any individual in the employ of any person or concern to pay all or any portion of an employer's contributions, required under this act from such employer, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to finance the employer's contributions required from him, require or accept any waiver of any right hereunder by any individual in his employ, or in any manner obstruct or impede the filing of claims for benefits. Any employer or officer or agent of any employer who violates any provision of this subsection shall, for each offense, be guilty of a misdemeanor.

B. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under this act shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy whatsoever provided for the collection of debt; and benefits received by any individual, so long as they are not mingled with other funds of the recipient, shall be exempt from any remedy whatsoever for the collection of all debts, except debts incurred for necessaries furnished to such individual or his spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subsection shall be void. (As amended Act Apr. 28, 1941, c. 554, §14.)

4337-36. Penalties.—A. Whoever makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact to obtain or increase any benefit or other payment under this act or under the employment security law of any state or of the federal government, either for himself or any other person shall be guilty of a misdemeanor.

B. Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining a subject employer or to avoid or reduce any contribution or other payment required from an employing unit under this act or under the employment and security law of any state or of the federal government, or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports at the time when required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be guilty of a misdemeanor. (As amended Act Apr. 28, 1941, c. 554, §15.)

4337-37. Representation in court.—A. In any civil action to enforce the provisions of this act the director shall be represented by the attorney general. (As amended Act Apr. 28, 1941, c. 554, §16.)

4337-38. Nonliability of state.—Benefits shall be deemed to be due and payable under this act only to the extent provided in this act and to the extent that moneys are available therefor to the credit of the unemployment compensation fund and neither the state nor the director shall be liable for any amount in excess of such sums. (As amended Act Apr. 28, 1941, c. 554, §17.)

4337-39. Saving clause.—The legislature reserves the right to amend or repeal all or any part of this act at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this act or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this act at any time. (As amended Act Apr. 28, 1941, c. 554, §18.)

Provision in Indiana Unemployment Compensation Act that if any part of Federal Social Security Act shall become inoperative, provisions of Indiana Act shall likewise become inoperative does not contemplate only a situation where whole federal act is repealed or held unconstitutional, and where federal statutes abate taxes of receivership of bank under Federal Social Security Act, the taxes are abated also under State Unemployment Compensation Act. State v. Scheumann, 31NE(2d)(Ind) 632.

4337-40. Separability of provisions.—If any provision of this act, or the application thereof to any person or circumstances is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances shall not be affected thereby. (As amended Act Apr. 28, 1941, c. 554, §19.)

4337-41. Short title.—This act shall be known and may be cited as the "Minnesota Employment and Security Act." (As amended Act Apr. 28, 1941, c. 554, §20.)

4337-42. Effective date.—This act shall take effect and be in force from and after its passage unless otherwise specifically provided therein except that sections 4337-22, 4337-23, 4337-25, 4337-26, 4337-27, 4337-30 and 4337-33, Mason's Supplement 1940, as amended by this act shall take effect and be in force from and after July 1, 1941; provided, further, that sections 4337-22, 4337-25, 4337-26, Mason's Supplement 1940, as amended by this act shall

not affect the determination of, or rights to, benefits with respect to claims filed prior to July 1, 1941. (As amended Act Apr. 28, 1941, c. 554, §21.)

4337-42a. Date effective.—This act shall take effect and be in force from and after its passage, unless otherwise specifically provided therein, except that sections 4337-22, 4337-25, 4337-26, 4337-27, and 4337-28, Mason's Supplement 1940, as amended by Laws 1941, Chapter 554 and as amended by this act shall take effect and be in force from and after July 1, 1943; provided further, that section 4337-22, 4337-25 and 4337-26, Mason's Supplement 1940, as amended by Laws 1941, Chapter 554 and as amended by this act shall not affect the determination of, or rights to, benefits with respect to claims filed prior to July 1, 1943. (Act Apr. 24, 1943, c. 650, §10.)

4337-43. Repealer.—Mason's Supplement 1940, Sections 4337-32a and 4337-32b are hereby repealed. (Act. Apr. 28, 1941, c. 554, §23.)

CHAPTER 24

Soldiers' Home, Relief, Etc.

4344. Soldiers' home—Admission to.—The Minnesota Soldiers' Home shall be maintained at Minneapolis, under the management of seven trustees, one of whom shall be a woman, to be known as the "Soldiers' Home Board," as a home for all honorably discharged persons who served in the Mexican War, the War of the Rebellion, the Spanish-American War, the Philippine Insurrection, the Boxer Rebellion, the war of 1917 and 1918 commonly called the World War, or the War between the United States of America and its allies, and Germany, Japan, Italy and their allies, persons who actually served in any campaign against the Indians in this state in the year 1862, whether as soldiers of the United States or not, for honorably discharged members of the Minnesota National Guard mustered into Federal Service in 1916 who served on the Mexican border, and for all honorably discharged persons who served between September 16, 1940, and December 7, 1941, both dates inclusive. But no person shall be admitted to the Home who has not been a resident of the state for three years next preceding the date of his application, unless he served in a Minnesota regiment, or was credited to the state, or served in the Indian Campaign as aforesaid. Nor shall any person be admitted unless he is without adequate means of support, and is unable, by reason of wounds, disease, old age or infirmity to properly maintain himself. (As amended Act Feb. 20, 1943, c. 54, §1.)

Department of Veterans' Affairs created. Laws 1943, c. 420.

There is no officer or board vested with authority to grant permission for a search for hidden treasure on property of soldiers' home. Op. Atty. Gen. (88A-19), Dec. 29, 1941.

4345. Persons who may be admitted to soldiers' home.

Wife of member of home less than 55 years of age and having mental condition which would bar her from being admitted to the home may be given relief outside home. Op. Atty. Gen. (394l), Sept. 5, 1940.

4349. Trustees of soldiers' home board to receive expenses in addition to per diem compensation.

Per diem cannot be paid to a member of board for attendance at conventions which are not meetings of the board or a committee thereof. Op. Atty. Gen., (394f), May 23, 1940.

Member of board attending veterans' meeting on official business is not attending a board or committee meeting, since board meetings may only be held at the home. Op. Atty. Gen. (394f), Oct. 11, 1940.

4350. Officers of Soldiers' Home—Secretary, etc.

Position of secretary to soldiers' home board is within classified service. Op. Atty. Gen., (644), Dec. 6, 1939.

4351. Meetings—Executive committee.

Board meetings may only be held at the home. Op. Atty. Gen. (394f), Oct. 11, 1940.

4355. Relief fund, how used.

Board has authority to authorize use of federal surplus food stamps within limitations prescribed in federal act. Op. Atty. Gen., June 17, 1941.

MISCELLANEOUS PROVISIONS

4367. License fees not required of honorably discharged soldiers, etc.

Section exempts veteran from payment of state but not city license fee for peddling or hawking. Op. Atty. Gen. (290j-10), Apr. 27, 1943.

4368. Preference to war veterans in public appointments.—Subdivision 1. **Who are veterans.**—The word "veteran" as used in this section and Section 4369 means any man or woman honorably discharged from the army, navy, marine corps, or Women's Auxiliary Army Corps of the United States in the Civil War, Spanish-American War, Philippine Insurrection, China Relief Expedition, or any armed expedition for which Congress has awarded a campaign badge or medal, World War wherein the United States of America and the allied nations of England, France, and others were engaged in war against the Imperial German Government and its allies, and the war between the United States of America and its allies, and Germany, Japan, Italy and their allies, who is a citizen of the United States, and has been a resident of the State of Minnesota and of the county, city, town, village, school district, or political subdivision thereof to which application is made for five years immediately preceding his application, or who enlisted from the State of Minnesota.

Subdivision 2. **Preference to war veterans in public appointments.**—That in every public department and upon all public works in the State of Minnesota and the counties, cities, towns, villages, school districts and all other political subdivisions and agencies thereof, honorably discharged veterans shall be entitled to preference in appointments, employment and promotion over other applicants therefor, and the persons thus preferred shall not be disqualified from holding any position hereinbefore mentioned on account of his age or by reason of any physical disability, provided such age and disability does not render him incompetent to perform properly the duties of the position applied for and when such veteran shall apply for appointment or employment under this act, the officer, board or person whose duty it is, or may be, to appoint or employ such person to fill such position or place, shall before appointing or employing anyone to fill such position or place, except where said veteran has already been qualified under civil service for the position applied for, make an investigaion as to the qualifications of said veteran for such place or position, and if he is of good moral character, and can perform the duties of said position applied for by him, as hereinbefore provided, said officer, board or person shall appoint said veteran to such position or place of employment.

In any governmental agency having an established civil service or merit system, no inquiry shall be made of any applicant for examination as to whether or not he is a veteran, nor shall any distinction be made in giving the examination or grading the results thereof on account of the fact that the applicant may be a veteran; provided, that this shall not abridge any