

1944 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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be such price brackets in the license agreement. Any number of cancellation to which an exhibitor is entitled may be made the lowest price bracket at the exhibitor's option.

The right to cancellation shall not be effective, unless the exhibitor exercises such right by giving notice thereof, to the distributor by registered mail, within 15 days after being notified of the availability of a feature motion picture. In determining the number of feature motion pictures that may be cancelled, fractions of one-half or more shall be counted as one and fractions of less than one-half shall not be counted. (Act Apr. 26, 1941, c. 460, §2.) [326.523]

3976-103. Same—Conditions of licenses.—No distributor shall license feature motion picture films to an exhibitor to be exhibited, shown or performed in this state, upon the condition that the exhibitor must also license short subjects, newsreels, trailers, serials, re-issue, foreign and western motion picture films. (Act Apr. 26, 1941, c. 460, §3.) [326.524]

3976-104. Same—Public policy.—Any provision of any license hereafter made and entered into which is contrary to any provisions of this act, is hereby declared to be against public policy and void. (Act Apr. 26, 1941, c. 460, §4.) [326.525]

3976-105. Violation of act.—Every person violating any provisions of this act, or assisting in such violation, shall, upon conviction thereof, be punished by a fine not exceeding \$1,000, or, in default, of the payment of such fine, by imprisonment in the county jail for not more than one year. In the case of a corporation, the violation of this act shall be deemed to be also that of the individual directors, officers or agents of such corporation who have assisted in such violation, or who have authorized, ordered or done the acts or omissions constituting, in whole or in part, such violation, and upon conviction thereof, any such directors, officers or agents shall be punished by fine or imprisonment, as in this section provided. (Act Apr. 26, 1941, c. 460, §5.) [326.53]

3976-106. Separability clause.—If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of the act and the applicability of such provision to other persons and circumstances shall not be affected thereby. (Act Apr. 26, 1941, c. 460, §6.)

3976-107. Application of act.—The provisions of this act shall not apply to the licensing of motion picture films to any school, college, university, church, or any educational, fraternal, or religious organizations in this state. (Act Apr. 26, 1941, c. 460, §7.) [326.526]

CHAPTER 21B

Regulation of Sale of Stocks, Bonds and Other Securities, Etc.

3996-1. Definitions.—When used in this act, the following words shall have the following respective meanings, unless the context otherwise requires:

(1) "Person" shall mean and include a natural person, firm, co-partnership, association, syndicate, joint stock company, unincorporated company or organization or association, trust, trustee of a trust, a corporation organized under the laws of any state or of the United States or of any territory or possession thereof or of the District of Columbia or of any foreign government. The term "trust" as herein used shall not include a trust created or appointed under or by virtue of a last will and testament, or by a court of law or equity, or a public charitable trust.

(2) "Sale," "sell" or "sold" shall mean and include any disposition for value, an offer to sell, a solicitation of a subscription or sale, or an attempt to sell in any manner whatsoever, an option of sale, a subscription, a pre-organization subscription or certificate, a re-organization subscription or certificate, an agreement to issue or transfer, an exchange, pledge, hypothecation or any transfer in trust or otherwise by way of mortgage. Any security given or delivered as a bonus with any sale of securities, as such sale is herein defined, or with any other thing, shall be conclusively presumed to constitute a part of the subject of such sale and to have been sold for value. Provided, however, that the sale of a security under conditions which entitle the purchaser or subsequent holder to exchange the same for, or to purchase, some other security shall not be deemed a sale or offer for sale of such other security; but no exchange for or purchase of such other security shall ever be made unless and until the sale thereof shall have been first authorized in Minnesota by registration under this act, or by exemption therefrom, or by other provisions of law.

(3) "Security" shall mean and include any stock, share, bond, note, debenture, commercial paper, evidence of indebtedness, investment contract. Interest in or under a profit-sharing or participating agree-

ment or scheme, or beneficial interest in a trust or pretended trust. Any interest in any security shall be deemed a security.

(4) "Broker" shall mean and include every person, who engages, or professes to engage, either for all or part of his time, directly or through an agent, in the business of accepting and executing buy and sell orders for securities of which he is not the issuer or owner.

(5) "Issuer" shall mean and include every person who proposes to issue, has issued, or shall hereafter issue any securities.

(6) "Agent" shall mean and include every person, other than a broker or dealer, employed, appointed, or authorized by an issuer, dealer, broker or owner to sell securities. The term "agent" shall not include the partners of a partnership or officers of a corporation or association licensed as a broker, or dealer, or for whom securities are registered; provided that the term "officers" as used in this paragraph shall not include the directors of a corporation.

(7) "Commission" shall mean the commission supervising and controlling the department of commerce of the state of Minnesota under Chapter 426, Laws 1925, but subject to all the provisions thereof relating to the powers and duties of the commissioner of securities as successor of the state securities commission. Wherever necessary to give effect to such provision, the term "commission" as used in this act may be construed as meaning or including such commissioner of securities under said Chapter 426, Laws 1925. Said commission, for the purposes of this act, shall be known as the commerce commission. "Commissioner" as used in this act shall mean the commissioner of securities of the department of commerce.

(8) "Investor" as used in this act shall mean and include any person (as above defined) to whom any security (as above defined) is sold or offered for sale (as above defined) or who purchases or acquires or attempts to purchase or acquire any such security.

(9) "Dealer" shall mean and include every person who engages or professes to engage in selling directly or through an agent in the course of continued and successive sales any securities of which he is not the issuer for another, or who purchases and acquires for himself or another any securities of which he is not the issuer for the purpose of reselling the same to others, and of buying, selling or otherwise dealing or trading in (such) securities for himself or for another.

(10) "Investment adviser" shall mean and include any person other than a licensed broker or licensed dealer, who, for compensation, engages in the business of advising others, except persons to whom sales are exempted by paragraph (7) of Section 3996-3 of the act, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities; provided, however, that said term shall not be construed to include a bank, trust company, or licensed practicing attorney whose performance of such services is solely incidental to the practice of his profession, or such other persons, not within the intent of this paragraph as the commission may designate by rules and regulations or order. (As amended Act Apr. 28, 1941, c. 547, §1.)

City Co. of N. Y. v. Stern, (CCA8), 110F(2d)601, aff'g 25FSupp948, overruled by 209M155, 296NW513, and later rev'd and remanded by 312US666, 61SCR823, 85LEd1110. Purpose of blue sky law is to prevent offering to public all kinds and forms of securities and investment contracts unless and until opportunity has first been given securities commission to investigate venture and determine whether sound policy justifies granting of permission to sell particular security so offered; and to prevent exploitation by unscrupulous dealers in such investments. State v. Hofacre, 206M167, 288NW13. See Dun. Dig. 1125a.

(2). There was a "sale" of a security as defined by our blue sky law. State v. Hofacre, 206M167, 288NW13. See Dun. Dig. 1125a.

A distribution of stock pursuant to a plan for reorganization whereby the old company turned over all its assets to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was in the nature of a "liquidating dividend" and not a "sale". Dworsky v. Buzza Co., 215M282, 9NW(2d)767. See Dun. Dig. 1125a.

An offer to preferred stockholders of option of taking retirement price or of taking a new stock carrying a lower dividend rate, is an "exchange" which must be registered. Op. Atty. Gen. (616B-8), Nov. 7, 1940.

(3). A contract issued by an assumed specialist in market dealings, providing that the contract purchaser should put up part of money, specialist a small part, total sum to be used by latter with which to speculate in stocks, bonds, commodities, etc., and providing that operator should have full control of fund, and whereby profits were to be divided equally, held to be a "security" requiring registration with and approval of securities commission. State v. Hofacre, 206M167, 288NW13. See Dun. Dig. 1125a.

Contract for clearing and cultivation of land contemplating a conveyance free of incumbrances at the option of the purchaser, held not an "investment contract" or "sale of securities." State v. Hemphill, 195So(Fla)915.

3996-2. Securities exempted from operation of certain provisions of law.—(1) (a) The provisions of Sections 4, 5, 6 and 7 of this act with respect to the registration of securities, shall not apply to the following securities: Any security issued or guaranteed by the United States or by any state, territory or insular possession thereof or by the District of Columbia, or by the Dominion of Canada or any province thereof, or by any political subdivision, municipality, or agency of any one or more of the foregoing or by any public instrumentality or corporate or quasi-corporate public body lawfully created by any one or more of the foregoing; provided such security is payable by exercise of the issuer's or guarantor's general taxation, special assessment, or licensing powers or by appropriation of revenues to be derived from operation of a publicly owned utility or convenience and also any certificate of deposit for, temporary or interim certificate for, or receipt for any such security.

(2) Any security issued by and representing an interest in, or issued by and representing a direct ob-

ligation of, a state bank or trust company organized and operating under the laws of Minnesota, a national bank, wherever located, or a corporation created or existing by an act of the Congress of the United States other than corporations created or existing under the code of laws for the District of Columbia or under the code of laws for any territory or possession of the United States, provided that such corporation is subject to supervision or regulation by the government of the United States.

(3) Any security issued or guaranteed either as to principal, interest or dividends, by a railroad which is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by any regulatory board, body or official, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and all securities senior thereto; also equipment notes, bonds or trust certificates, based on chattel mortgages, leases or agreements for conditional sale, of cars, motive power or other rolling stock mortgaged, leased or sold to or furnished for the use of any railroad and equipment notes, bonds or trust certificates where the ownership of title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state or of the Dominion of Canada, to secure the payment of such equipment notes, bonds or trust certificates; provided that such railroad is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a regulatory board, body or official having like powers, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and also any interest bearing securities issued by a public service utility which utility is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public service commission, or any board, body or official having like powers, of the United States or of any state or territory, which security would at the time of sale, qualify for registration under Mason's Minnesota Statutes for 1927, Section 3996-6, Subsection 2a.

(4) Securities listed on the New York stock exchange, New York curb exchange and Chicago stock exchange, which securities have been so listed pursuant to official authorization by such exchange, and all securities senior to any securities so listed, subscription rights so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as such listing shall remain in effect.

(5) Commercial paper or negotiable promissory notes, maturing not more than within six months from the date of issue.

(6) Any security issued by a corporation organized exclusively for social, religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; "Provided, however, that any security in whatever form, issued by any such corporation, offering and furnishing a burial service or funeral benefit, directly or indirectly, for a financial consideration, shall be subject to registration.

(7) Policy contracts of insurance companies licensed to do business in this state.

(8) Any security issued by a building and loan association organized under the laws of this state.

(9) Securities of any co-operative association organized in good faith under the laws of this state exclusively for the purpose of conducting upon the co-operative plan among its members, stockholders and patrons any or all of the following businesses: Any agricultural, dairy, livestock or produce business; the business of selling, marketing or otherwise handling, any agricultural, dairy or livestock products, or other

produce, raised or produced by the members, stockholders and patrons of such association, or by any co-operative associations; the manufacture of anything from any agricultural, dairy or livestock products, or other produce, produced by the members, stockholders and patrons of such association; any business incidental to any of the above purposes, the operation of a rural telephone or rural electrification distribution system among its stockholders. Except as last hereinabove provided otherwise, all co-operative associations organized or existing under Chapter 326, Session Laws of Minnesota for 1923, shall be deemed within the purview of this act; and any provision to the contrary in said Chapter 326, Laws 1923, is hereby repealed.

(10) Capital shares, which have been outstanding for at least five years, of a corporation, organized under the laws of a state of the United States or the District of Columbia, which has out-only one class of shares and which is authorized by law to write insurance in this state and which corporation itself, or together with its predecessor or predecessors, has been continuously engaged in the insurance business for 20 years, has an aggregate capital and surplus of not less than \$5,000,000 and has, during each of the past five years, paid a dividend, which aggregate dividends for such period averaged at least three per cent, calculated on the proposed sale price, on all its shares outstanding on the date of sale.

(11) Capital shares, which have been outstanding for at least five years, of a bank or trust company, organized under the laws of a state of the United States, or the District of Columbia, which has outstanding only one class of shares and which itself, or together with its predecessor or predecessors, has been continuously engaged in the banking business for 20 years, has an aggregate capital, surplus, and undivided profits of not less than \$5,000,000 and has, during each of the past five years, paid a dividend, which aggregate dividends for such period averaged at least three per cent, calculated on the proposed sale price, on all its shares outstanding on the date of sale.

The commission may, by written order or regulation, suspend or wholly revoke the exempt status of any security or class of security exempted by this section or may require, prior to the sale of any such security or class of security, such information with respect thereto or the manner or terms of the proposed sales thereof, or such reports after sales thereof, as the commission may deem necessary to enable it to determine whether or not it should suspend or revoke the exempt status of such security or class of security. (As amended Act Apr. 28, 1941, c. 547, §2.)

(6). Certificates of indebtedness issued by a Ski and Outing Club need not be registered if no part of net earnings inures to benefit of any private stockholder or individual. Op. Atty. Gen. (616E-4), Sept. 2, 1941.

(7). An annuity contract issued by a life insurance company, is not a "security" of sort dealt with by blue sky law, and is not subject to administrative powers of security commission. *Bates v. E.*, 206M482, 288NW834. See Dun. Dig. 1125a.

(8). All cooperatives are subject to securities act except those dealing in agricultural, dairy, livestock and produce businesses and the operation of rural telephone and rural electric distribution systems. Op. Atty. Gen., (616E-5), Oct. 10, 1939.

3996-3. Sales excepted from operation of law.—The provisions of this act, except as herein expressly provided, shall not apply to sales of the following character:

(1) Any isolated sales of any securities by the issuer or owner thereof, or by a representative for the account of such issuer or owner, such sales not being made in the course of repeated and successive sales of securities of the same issue by such issuer or owner or by such representative for the account of such issuer or owner. This exception shall not be deemed to exempt a broker or a broker's agent from the requirement of obtaining a license as herein provided. In

any complaint, information, or indictment, charging a sale in violation of this act, it shall not be necessary to specifically name or identify persons, other than the complainant, to whom like sales have been made but it shall be sufficient to sustain the same upon demurrer or motion for dismissal before trial if it alleges that such sale was made in the course of repeated and successive sales of the same issue.

(2) Any sale of notes or bonds secured by a mortgage lien when the entire lien together with all notes or bonds secured thereby are sold to a single purchaser at a single sale.

(3) Any judicial sale, exchange or issuance of securities made pursuant to an order of a court of competent jurisdiction in this state.

(4) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution.

(5) Any subscription for securities when no cash or other consideration is paid by, or agreed to be paid by, the purchaser prior to the registration of the securities; provided, that all such subscriptions are expressly conditioned upon the registration of such securities within one year from the date of such subscription and otherwise to be null and void.

(6) The sale, by a pledge holder or mortgage selling in the ordinary course of business at public or private sale of a security pledged with him in good faith as a security for a bona fide debt.

(7) Sales excepted from operation of law.—The sale to any licensed broker or licensed dealer or to any bank or financial institution under the supervision of any instrumentality or officer of the United States or of the commissioner of banks or of the commissioner of insurance of this state. (As amended Apr. 21, 1943, c. 553, §1.)

(8) Sales excepted from operation of law.—The exchange of securities by the issuer thereof with its own security holders without any other consideration from such security holders and where no commission or other remuneration is to be paid to any one for effecting such exchange; provided that the offer of exchange is filed with the commission at least ten days prior to the making thereof with the fee of \$10.00 required by Section 14, Paragraph (6). (As amended Apr. 21, 1943, c. 553, §2.)

(9) The solicitation or execution of any orders by a licensed dealer or a licensed broker for the purchase of any security, provided that such dealer or broker acts as agent for the purchaser and has no direct material interest in the sale or distribution of such security, receives no commission, profit, or other compensation from any source other than the purchaser and delivers to the purchaser written confirmation of the transaction which clearly itemizes his commission, or other compensation.

The commissioner may, by written order or regulation, suspend or wholly revoke the exempt status of any sales or class of sales exempted by this section or may require, prior to the making of any such sales or class of sales, such information with respect thereto or the security to be sold thereunder, or such reports after the making of such sale, as the commissioner may deem necessary to enable it to determine whether or not it should suspend or revoke the exempt status of such sales or class of sales. (As amended Act Apr. 28, 1941, c. 547, §3; Apr. 21, 1943, c. 553, §§1, 2.)

An offer to preferred stockholders of option of taking retirement price or of taking a new stock carrying a lower dividend rate, is an "exchange" which must be registered. Op. Atty. Gen. (616B-8), Nov. 7, 1940.

(4). A distribution of stock pursuant to a plan for reorganization whereby the old company turned over all its assets to the new company in consideration for stock in the new company which was then given pro rata to old company preferred stockholders was a distribution in the nature of a liquidating dividend, and no application for registration was necessary. *Dworsky v. Buzza Co.*, 215M282, 9NW(2d)767. See Dun. Dig. 1125a.

(7). Amended. Laws 1943, c. 553, §1. See above text.

(8). Amended. Laws 1943, c. 553, §2. See above text.

3996-4. Security registered before sale—Application or notice.—No securities shall be sold within the State of Minnesota except in accordance with a registration thereof then in effect.

Registration may be secured by application as provided in Section 5 of the act or by notification as provided in Section 6 of the act. Applications and notifications may be filed by the issuer, the owner, a licensed broker or a licensed dealer and may be for restricted registration or unlimited registration. A restricted registration is one which permits sales of a specified number only of units of a security by an issuer, owner, licensed broker or licensed dealer or any one or more thereof designated by the applicant. An unlimited registration is one which permits sales of an unlimited number of units of a security by the issuer, owner, and all licensed brokers and licensed dealers. Any licensed broker or licensed dealer may sell, pursuant to an unlimited registration, additional units of a security issued through conversion of any security outstanding on the date of registration or as a stock dividend on shares of the issuer outstanding at said date or through split-up of the security registered, and may also sell additional units of the security otherwise issued after the date of registration if, after reasonable investigation, he had no reason to believe that such additional units were issued otherwise than as hereinabove in this proviso set forth. The sale price fixed in any registration shall be a maximum price unless otherwise expressly provided in the registration. (As amended Act Apr. 28, 1941, c. 547, §4; Apr. 21, 1943, c. 553, §3.)

Shepard v. C., (DC-Minn), 24FSupp682. App. dis., (CCA 8), 106F(2d)994.

Departure of foreign corporation from Minnesota, subsequent absence therefrom and residence elsewhere, held to have tolled Minnesota Statute of Limitations with respect to action against such corporation. City Co. of New York v. S., (CCA8), 110F(2d)601, aff'g (DC-Minn), 25FSupp948. Overruled by 209M155, 296NW513 and later rev'd and remanded 312US666, 61SCR823, 85LEd1110. See Dun. Dig. 3748, 5610. Chase Securities Corp. v. V., (CCA 8), 110F(2d)607.

Registration involves procuring a right to sell after the securities have passed inspection by the commissioner, and the purpose of the law is to protect the public against fraud in the sale of securities. Boyum v. Massachusetts Investors Trust, 215M485, 10NW(2d)379. See Dun. Dig. 1125a.

3996-5. Registration by application.—Applications for registration of securities shall be made on forms prescribed by the commission.

Whenever the commissioner deems it necessary he shall have power in connection with pending applications and at the expense of the applicant to require the applicant to furnish additional information, to order an appraisal, audit or other examination and report, and, where the applicant is the issuer of the securities, or the proposed sale is to be on behalf of the issuer, to make an investigation of the books, records, property, business and affairs of such issuer.

Upon compliance with all the provisions of this act applicable to such application and the requirements of the commission or commissioner, the commission shall either register such securities or deny the application. The commission shall have power to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this act. Registration shall be by entry in a book called "Register of Securities," which entry shall show the securities registered and for whom registered, and the conditions, limitations and restrictions, if any, or shall make proper reference to a formal order of the commission on file showing such conditions, limitations and restrictions. The commission shall have power to deny an application for registration if the commission is of the opinion that the securities are fraudulent, or if it appears to the commission that the sale thereof would work a fraud or deception on the pur-

chasers thereof, or if the applicant has violated any of the provisions of this act or any registration or lawful order of the commission, or for good cause appearing to the commission. Denial shall be by written order. (As amended Act Apr. 28, 1941, c. 547, §5.)

3996-6. Registration by notification.—Whenever any securities required to be registered by the provisions of this act are within any of the following subsections of this section, any person entitled to make application for the registration thereof may, in lieu of such application file with the commission a notification of intention to sell such securities, which notification shall be on forms prescribed by the commission and shall contain the following information:

(a) Name of issuer.

(b) Authorized amount of the issue, the amount issued and outstanding and, if restricted, the amount covered by the notification.

(c) Statement that the securities covered by the notification are within a designated subsection of this section.

(d) A descriptive circular or statement briefly describing the securities.

(e) The price at which the securities are to be sold.

(f) If the sale is restricted, the names of the designated licensed brokers and licensed dealers, if any.

The securities which may be registered by notification are as follows:

Subdivision 1. Any notes or bonds secured by a first mortgage or deed of trust upon real estate or leaseholds on real estate (not including oil, gas or mining property) situated in any state or territory of the United States or in the District of Columbia or in the Dominion of Canada.

(a) When the mortgage is upon agricultural lands used and valuable principally for agricultural purposes and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds already outstanding and equally secured by such mortgage does not exceed 70 per cent of the then fair market value of said lands, including any improvements appurtenant thereto.

(b) When the mortgage is upon city or village real estate or leaseholds and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per cent of the then fair market value of said real estate or leaseholds, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than three per cent of the principal of said mortgage indebtedness.

(c) When the mortgage is upon city or village real estate or leaseholds upon which real estate or leaseholds a building or buildings is or are about in good faith forthwith to be erected according to the expressed terms of the mortgage and when reasonable adequate provision has been made for financing the full completion of said building free and clear of any lien superior to said mortgage, and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per cent of the fair market value of such mortgaged property, including the building or buildings to be erected thereon as aforesaid, and when said mortgaged property is to be used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or will have a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than three per cent of the principal of said mortgage indebtedness.

Subdivision 2. Securities issued by any person who, at the time of the notification, owns a property, business or industry which has been in continuous operation, either under a single ownership or under several ownerships for not less than five years next preceding the filing of the notification, and which property, business or industry has shown, during a period of not less than three years or more than ten years next prior to the close of its fiscal year next preceding such notification, average annual net earnings, determined in accordance with accepted accounting practices, after deducting all prior charges, excepting the charges and fixed dividends upon any securities to be retired out of the proceeds of such sale, and assets (not including patents, copyrights, secret processes, formulas, good will, trade-marks, trade brands, franchises, and other like intangible property), as of the close of its fiscal year next preceding such notification, together with the proceeds of the sale of such securities accruing to the issuer, as follows:

(a) In the case of interest-bearing securities, not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest-bearing obligations of equal rank, and assets at least equal to 125 per cent of the face value of such interest-bearing securities, and all other obligations of equal or prior rank outstanding and not to be retired out of the proceeds of the sale of such securities.

(b) In the case of preferred stock, not less than one and one-half times the annual dividend on such preferred stock and on all other outstanding stock of equal rank, and assets at least equal to 125 per cent of the par value of the aggregate amount of such preferred stock and all other outstanding preferred stock of equal rank, after the deduction from such assets of all indebtedness, which will be existing and all stock of senior rank which will be outstanding after the application of the proceeds of the preferred stock offered for sale.

(c) In the case of common stock, not less than four per cent upon all outstanding common stock of equal rank together with the amount of common stock then offered for sale, all reckoned upon the price at which said stock is then offered for sale or sold.

For the purpose of registering under this subsection securities of any issuer owning more than 50 per cent of the outstanding voting stock of a subsidiary company, such issuer shall be deemed to be the owner of the business of the subsidiary company, and the earnings of the subsidiary company applicable to the payment of dividends upon all stock of the subsidiary company owned by such issuer shall be considered as earnings of such issuer.

Subdivision 3. (a) Securities which have been outstanding more than five years, which have a fixed interest or dividend rate, as to which no default exists or has existed for five years, and the issuer of which, as of the close of its fiscal year next preceding such notification, has, in the case of interest-bearing securities, assets (not including patents, copyrights, secret processes, formulas, good will, trade-marks, trade brands, franchises, and other like intangible property), at least equal to 125 per cent of the face value of such securities and all other securities of the issuer of equal or prior rank thereto, and, in the case of dividend bearing securities, assets, as above defined, after deducting therefrom all indebtedness of the issuer, at least equal to 125 per cent of the par or liquidating value, whichever is greater, of such securities and all other capital shares of the issuer of equal or prior rank thereto.

(b) Capital shares which have been outstanding more than five years, which have no fixed dividend charge, and the issuer of which has had, during a period of five years next prior to the close of its last fiscal year next preceding such notification, average annual net earnings available for dividends thereon, determined according to sound accounting practice, at least equal to four per cent upon all of the out-

standing issue of which said shares are a part, reckoned upon the price at which said shares are proposed to be sold. The provisions of subsection 2 with respect to the ownership by an issuer of stock of a subsidiary company shall be applicable to this subsection 3.

The commission shall have the same powers and duties with respect to a notification under any of the subsections of this section as it has with respect to an application. If no action is taken by the commission with respect to a notification within 48 hours after the filing thereof, the securities covered thereby shall become registered, subject to the terms of the notification, provided that the commission may, within said period, extend the same for such reasonable time as it deems necessary or may, within such 48 hour period or any extension thereof, require the registration to be made by application notwithstanding that it would otherwise be registerable by notification, and in such event all provisions with respect to registration by application shall apply. Notice of any such extension of time or of such requirement of registration by application shall be deemed to have been given when deposited in the post office in and for the city of St. Paul addressed to the person giving such notification, first-class postage prepaid thereon, or when filed with a telegraph company in said city addressed to such person and sent collect or prepaid. In the event that the commission shall so require registration to be made by application, the applicant may withdraw such notification, and in such event the entire fee paid by the applicant, except the sum of \$10.00, shall be returned to the applicant. (As amended Act Apr. 28, 1941, c. 547, §6.)

3996-7. **Terminations—Amendments.**—A registration shall remain in effect until suspended, revoked, or cancelled except that a restricted registration shall terminate upon the sale of the number of units therein designated. Anyone who may apply for registration of a security may apply to the commission in writing for an amendment to any existing registration. (As amended Act Apr. 28, 1941, c. 547, §7; Apr. 21, 1943, c. 553, §4.)

3996-8. **Information to commission by registrants—Powers as to investigations, etc.**—The commission shall have power in connection with any registration of any securities, which is not canceled or revoked, to require the person for whom such registration was made to furnish to the commission in such form as it may designate any information deemed necessary to assist the commission or commissioner in determining whether such registration should remain in force, whether such securities are fraudulent, whether the sale thereof has worked or will work a fraud on purchasers or whether such person has violated or is about to violate such registration or any lawful order of the commission or commissioner or any of the provisions of this act. In such case the commission or commissioner shall also have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such person, and to make or cause to be made on its behalf, an audit of the accounts, books and records of such person, and by its order to require such person to permit such examination, investigation and audit to be made and to require such person to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. If a registration has been made for a broker acting under a fiscal agency contract or other authority from the issuer, the commission shall have the same power as against such issuer.

Whenever the commission or commissioner is in possession of information indicating that any registered security is fraudulent, or that the further sale thereof would work a fraud or deception on the purchasers thereof, or that the person for whom a registration was made has violated or is about to violate

the registration or any lawful order of the commission or commissioner or any of the provisions of this act or for good cause appearing to the commission, it may issue its order requiring such person to show cause before the commission why such registration should not be revoked. In any such order the commission shall fix the time and place for hearing thereon not less than ten nor more than 30 days from the date of such order, and at which time and place a full hearing shall be had. A registration may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful to sell such securities. After such hearing the commission shall enter its order either vacating the order to show cause and suspension, or modifying the terms of the registration, or permanently revoking the registration or making such other disposition of the matter as the facts require.

Within 30 days after each anniversary date of a registration, any person may file with the commission an annual report on forms prescribed by the commission. Upon failure to file such report the commission may, in its discretion, cancel such registration, provided that the power so conferred upon the commission shall in no wise delimit the other powers conferred upon the commission with respect to registrations. Any registration canceled for failure to file an annual report may, in the discretion of the commission, be reinstated upon the filing of such report and any subsequent ones which otherwise would have been subject to filing had the registration not been canceled, and the payment of one annual report filing fee. Any such reinstatement shall be effective as of the date thereof.

A registration may be canceled by the commission in its discretion at any time at the request of the person who made the application or gave the notification on which such registration was made.

All amendments, suspensions, revocations, cancellations, and reinstatements of registrations shall be entered on the register of securities. No suspension, revocation, or cancellation of a registration shall become effective as to any person prior to his receipt of actual notice thereof, or, as to any person not theretofore receiving actual notice thereof, prior to the second business day following the mailing to such person by the commission of notice thereof or the filing by the commission of telegraphic notice thereof to such person. (As amended Act Apr. 28, 1941, c. 547, §8.) *Boyum v. Massachusetts Investor's Trust*, 215M485, 10NW (2d)379; note under §3996-4.

3996-9. Brokers — Licenses — Applications. — No broker or dealer shall sell or profess the business of selling, any securities unless or until he shall have been licensed as a broker or dealer as hereinafter provided.

To secure a broker's or dealer's license application shall be made to the commission on forms prescribed by said commission, which application shall be signed and sworn to by such applicant and shall contain, in addition to other information which the commission may require, applicant's name and address or addresses at which the business is to be conducted, the names and addresses of all officers of the applicant, if a corporation, and of all persons interested in said business, if a partnership or unincorporated association, and a statement of the business to be transacted. The commission shall have power, in connection with applications for brokers' or dealers' licenses, to require applicant to furnish in such form as it shall designate any additional information deemed necessary to enable it to properly pass on the application before it; to order an appraisal, audit, or such other expert or technical examination and report as may seem necessary; and to make an investigation of the books, records, property, business and affairs of such applicant.

Upon compliance by an applicant for a broker's or dealer's license with the provisions of this act and the

requirements of the commission, the commission shall either issue a license as prayed, or deny the application. The commission shall have power to deny if the applicant is not solvent, is of bad business repute, has violated any of the provisions of this act, or any registration, license or lawful order of the commission, or has engaged in or is about to engage in any fraudulent transactions, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause to the commission appearing. Denial shall be by written order.

Brokers' or dealers' licenses shall be good for one year from date of issuance, unless sooner suspended, cancelled or revoked, as hereinafter provided, and shall authorize the licensee therein named to transact business as a broker or dealer as herein defined and subject to provisions of this act.

The commission shall have power in connection with any broker's or dealer's license which is not revoked or canceled to require the licensee to furnish to the commission in such form as it may designate any information deemed necessary to assist the commission in determining whether such license should remain in force, whether such licensee is solvent, whether such licensee has violated or is about to violate any of the provisions of this act or any registration, license or lawful order of the commission, has sold or is about to sell any fraudulent securities, has engaged in or is about to engage in any fraudulent transaction, or whether the sale of securities by such licensee will work a fraud on purchasers.

In such case the commission shall also have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such licensee, and to make or cause to be made on its behalf an audit of the accounts, books and records of such licensee, and by its order to require such licensee to permit such examination, investigation and audit to be made and to require such licensee to submit to the commission his books, papers, records and accounts for the purpose of such examination, investigation and audit. Whenever the commission is in possession of information indicating that the licensee is not solvent, is of bad business repute, has violated or is about to violate any of the provisions of this act, or any registration, license or lawful order of the commission, has engaged in or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had. Any license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to transact any business as a broker or dealer. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

A broker's or dealer's license may be cancelled by the commission at any time at the request of the licensee.

Whenever it shall appear from evidence satisfactory to the Commissioner of Securities that any securities are being sold, have been sold, or about to be sold, in violation of any of the provisions of this act, or that in the issuance, sale, promotion, negotiation, advertisement, or disposition of any securities, including any securities exempted by Mason's Minnesota Statutes for 1927, Section 3996-2, or in any transaction exempted by Mason's Minnesota Statutes for 1927, Section 3996-3 any person, shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining any money or prop-

erty by means of any false pretense, representation or promise, whether the same be a representation or promise of a present existing fact or otherwise, or that any person shall have made, makes or attempts to make, fictitious or pretended sale of securities, including any securities exempted by Mason's Minnesota Statutes for 1927, Section 3996-2, or in any transaction exempted by Mason's Minnesota Statutes for 1927, Section 3996-3 the commissioner shall have power to apply for an injunction in any court of competent jurisdiction to restrain such unlawful acts or fraudulent practices, or such proposed unlawful acts or fraudulent practices, without abridging the penalties and other remedies by this Act provided;

And in addition thereto, whenever any of said facts in this section referred to are made to appear, from evidence satisfactory to the commissioner, or whenever it shall be made to appear by satisfactory evidence to the commissioner that any of said companies licensed under this act are operating or conducting their business, or have operated or conducted their business, contrary to the laws of this state, or with disregard to the rights of investors therein who have purchased securities or investment contracts, the Department of Commerce by and with the consent of the Governor of this State may apply to any court of competent jurisdiction for a receiver to be appointed for the property, assets, business and affairs of said person, firm, co-partnership, association or corporation, whose securities have been so sold, or who have sold or are selling such securities; and upon such showing made to such court, the court shall appoint a receiver therefor to liquidate, wind up, conserve the assets of said person, firm, copartnership, association or corporation, or to conduct or carry on such business, or otherwise dispose of the same with due regard to the rights of creditors and the holders and purchasers of said securities or investment contracts.

In any proceeding brought under the provisions of this act in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight (8) days' notice to the defendant therein; and such cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the State of Minnesota, except upon good cause shown to the court, and then only for such reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant party. (As amended Act Apr. 28, 1941, c. 547, §9.)

3996-10. Agents—Licenses—Applications.—No agent shall sell any securities unless or until he shall have been licensed as hereinafter required; provided that this section shall not apply to an agent of an issuer selling securities exempted under Section 2 of this act, or selling securities in a manner exempted under Section 3 of this act. No agent, except one appointed or employed by a licensed broker or licensed dealer, shall be issued a license under this act until he shall have resided in this state for one year immediately prior to making his application. Before any license shall be issued to an agent other than an agent of a licensed broker, he shall file a surety bond of such an amount as may be approved by the commissioner for the benefit of the public, or any issuer, owner, or licensed dealer may file a blanket surety bond covering all of its licensed agents, or may deposit in and with a depository acceptable to and approved by the commissioner of securities, securities, cash or other collateral of such kind and in such amount and in such a manner as may be prescribed and approved by the commissioner of securities. The filing of such blanket bond or the deposit of securities as aforesaid, shall operate in lieu of a bond as otherwise required for the individual agents, provided, however, that the commissioner of securities shall have power to require an additional or new bond to be filed when in the opinion of the commissioner of securities the bond

theretofore filed is insufficient due to the number of agents licensed for and on behalf of said issuer, owner, or licensed dealer, or that the amount of the bond has become impaired by reason of liability contingent or accrued thereunder.

Agents' licenses shall be issued only to agents of issuers or owners for whom securities are registered or to agents of licensed brokers or licensed dealers.

To secure such a license application shall be made to the commission on forms prescribed by the commissioner, which application shall be signed and sworn to by the person desiring such license, shall contain the applicant's address, and such other information as the commissioner may require, and shall be accompanied by a statement signed by the issuer, owner, licensed broker or licensed dealer for whom such applicant is agent stating that such issuer, owner, licensed broker or licensed dealer has appointed the person therein named as his agent. The commission or commissioner shall have power to require the applicant or his principal to furnish such additional information regarding the agent as may seem necessary. Such application shall either be granted and license issued, or denied. The commission shall have power to deny an agent's application if the applicant is not of good business repute or has violated any of the provisions of this act, or any registration, license or lawful order of the commission, or has engaged in any fraudulent transactions, or if it appears to the commission that the sale of securities by such applicant would work a fraud on purchasers thereof, or for good cause appearing to the commission. Denial shall be by written order. Agents' licenses shall be good for one year from date of issuance, unless sooner cancelled, suspended or revoked, and shall authorize the licensee therein named to do anything his principal is authorized to do.

The commission shall have power, in connection with any agent's license outstanding, to require the agent or the issuer, owner, licensed broker or licensed dealer for whom such agent was licensed, to furnish to the commission in such form as it may designate, any information deemed necessary to assist the commission in determining whether such license should remain in force. Whenever the commission or commissioner is in possession of information indicating that any licensed agent is not of good business repute, has violated or is about to violate any of the provisions of this act, or any regulation, license or lawful order of the commission, or has engaged or is about to engage in any fraudulent transaction, or that the sale of securities by such licensee would work a fraud on purchasers thereof, or for good cause appearing to the commission, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had.

Any agent's license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to act as such agent. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require.

On any matter pertaining to an agent's license, the issuer, owner, licensed broker or licensed dealer for whom such agent was appointed shall be deemed an interested party. Failure to secure an agent's license shall be deemed a violation of this act by both the issuer, owner, licensed broker or licensed dealer and the agent.

An agent's license may be cancelled by the commission at any time at the request of the issuer, owner, broker, or dealer for whom such agent was licensed, or the agent. (As amended Act Apr. 28, 1941, c. 547, §10.)

3996-11. Agents for service of process.—Every non-resident person shall, before having any securities registered or being licensed as a broker, dealer or agent, appoint the commissioner of securities, and his successor or successors in office, his true and lawful attorney upon whom may be served all legal process in any action or proceeding against such person or in which such person may be a party, in relation to or involving any transaction covered by this act, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Provided, that any such appointment shall become effective upon the registration of the securities or the issuance of the license in connection with which such appointment was filed.

The commission of any act which constitutes a violation of this act by any non-resident person who has not theretofore appointed the commissioner of securities his attorney in compliance with the first paragraph of this section shall be conclusively deemed an irrevocable appointment by such person of the commissioner of securities, and his successor or successors in office, as his true and lawful attorney upon whom may be served all legal process in any action or proceeding against him or in which he may be a party in relation to or involving such violation, and such violation shall be a signification of his agreement that all such legal process which is so served shall be as valid and binding upon him as if due and personal service thereof had been made upon him.

Service of process under this section shall be made by delivering a copy thereof to the commissioner of securities personally or by filing the same in his office, accompanied by one additional copy for each person so served, and by the mailing by the commissioner of a copy thereof by registered mail, not later than the business day following the day of such service, to each person so served at his address as shown by the records at the office of the commissioner in the case of service made on the commissioner as attorney pursuant to appointment in compliance with the first paragraph of this section and at his last known address in the case of service made on the commissioner as attorney pursuant to appointment by virtue of the second paragraph of this section.

Where the commissioner deems it necessary to institute any legal proceeding for the enforcement of any of the provisions of this act and it shall appear that he is unable to effect personal service within this state, service may be made in any of the following manners:

1. Personal service without the state proved by an affidavit of the person making the same.
2. Deposit in the mails, by registered mail, addressed to the interested person or persons at the last known address and the publication once only of notice of the institution of such legal proceeding, such publication to be made in a legal publication in the county where such proceeding is instituted at least ten days prior to the hearing thereon or the return date provided for in such proceeding.

3. Any mode of service approved by the court having jurisdiction over the matter. (As amended Act Apr. 28, 1941, c. 547, §11.)

Service of a summons upon Commissioner of Securities did not give court jurisdiction of an action to recover from a corporation which sold securities in Minnesota without complying with the law requiring it to obtain a license, where the corporation had withdrawn and was doing no business in the state at the time summons was served. *Sivertsen v. Bancamerica-Blair Corporation*, (D. C.-Minn.), 43 F. Supp. 233. Appeal dismissed (C.C.A.3), 129 F. (2d) 1022. See Dun. Dig. 1125a.

Running of limitations is not tolled by departure of foreign corporation from state so long as there is a process agent in state. *Pomeroy v. N.*, 209M155, 296NW 513. See Dun. Dig. 5610.

Jurisdiction of a foreign corporation was not obtained by service of summons by sheriff leaving copies with chief clerk of corporation division of secretary of state, or by leaving copies of summons with deputy securities commissioner, it appearing that defendant entered state in May, 1929, and transacted business in securities until October, 1931, when it entirely withdrew therefrom and

has never since transacted any business in the state, and never registered any securities in the state nor applied for nor received license to deal in securities therein, and never appointed any agent to receive process or notice for it nor complied with Mason's St., §§7493, 7494, on withdrawing, or with §3996-11, and securities sold to plaintiff were never registered with securities commissioner. *Babcock v. Bancamerica-Blair Corp.*, 212M428, 4 NW(2d)89. See Dun. Dig. 1125a.

A foreign corporation entering state in 1929 to transact business of dealing in securities without compliance with our Blue Sky Law did not automatically appoint a process agent, and was not estopped to deny appointment of securities commissioner its process agent. *Id.*

Appointment of commissioner as agent by a nonresident issuer of securities, who is not engaged in the business of selling such securities within the state and who has no office, agent, or employee therein, does not constitute the commissioner the issuer's agent for service of process in an action to recover for the issuer's subsequent conversion of securities issued by it and purchased by a resident of the state from a dealer therein who is neither the agent, employee, nor representative of the issuer. *Boym v. Massachusetts Investors Trust*, 215M 485, 10NW(2d)379. See Dun. Dig. 1125a.

3996-14. Deposits for examinations, etc.—Fund—Disbursements from—Refunds—Field examinations.—Whenever it is necessary for the commission or commissioner to incur any expense in connection with any application, notification, registration or license, it shall have the power to require the interested person to make an advance deposit with the commissioner in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to the "State Securities Commission, Investigation Fund," from which fund the commission shall have power to make disbursements to pay such expenses. Any unexpended portion shall be refunded. On field examinations made by a commissioner or employee away from the office of the commissioner a per diem of \$10.00 for each such person may be charged in addition to the actual expenses. Where additional technical, expert, or special services are used, the actual cost of such services may be charged in addition to actual expenses. (As amended Act Apr. 28, 1941, c. 547, §12.)

3996-15. Advertising matter—Regulations.—No person shall himself, or by or through others, or as agent or otherwise, publish, circulate, distribute, or cause to be published, circulated, or distributed, in any manner, any circular, prospectus, printed matter, document, pamphlet, advertisement through any medium, or other matter, pertaining to any securities which have not been registered as herein provided.

No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter (hereinafter referred to as advertising matter) containing or constituting an offer to sell any securities which have been registered in compliance with the provisions of Sections 5 and 6 hereof, shall be published, circulated, distributed, or caused to be published, circulated or distributed, in any manner, unless and until such advertising matter shall have been submitted in duplicate to the commission and approved by it. The commission shall have power to disapprove any such advertising matter which it deems in conflict with the purposes of this act.

All such advertising matter shall carry the name and address of the issuer, broker, or dealer, circulating, publishing or distributing same, and shall make no reference to the registration of the securities or the issuance of a license by the commission.

The provisions of this section shall not apply to securities exempted under Section 2 of this act, nor to sales of securities made in a manner exempted under Section 3 of this act. (As amended Act Apr. 28, 1941, c. 547, §13.)

3996-17. Fees for registration of securities.—The following fees shall be paid to the commission:

- (1) On application for registration, \$1.00 per \$1,000 on the total proposed sale price of the securities covered by such application; provided, that the minimum fee shall be \$25.00, and the maximum fee \$500.00. Provided, however, that the fee charged

any co-operative association organized in good faith under the laws of this state shall be \$5.00.

(2) On notification of intention to sell, 50 cents per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$200.00 except that the maximum fee shall be \$100.00 on securities outstanding for more than one year. Provided, however, that the fee charged any co-operative association organized in good faith under the laws of this state shall not exceed \$5.00.

(3) On application for brokers' licenses, \$50.00.

(4) On application for agents' licenses, \$5.00.

(5) On application for dealers' licenses, \$75.00.

(6) On filing an offer under subdivision (8) of Section 3, \$10.00.

(7) Fees.—On application for an amendment to a registration increasing the maximum selling price thereunder, \$10.00, plus an additional fee calculated in accordance with subparagraph (1) or (2) of this section, as the case may be, less the amount of all fees theretofore paid pursuant to subparagraph (1) or (2) of this section in connection with the registration the amendment of which is requested; and on any other application for an amendment, \$10.00. (As amended Act Apr. 21, 1943, c. 553, §5.)

(8) On annual reports of any investment company as now defined by Section 3 of the "Investment Company Act of 1940" (Title I of Public No. 768-76 Congress, 3rd Session), \$100.00.

(9) On annual reports other than those covered by the preceding paragraph (8), \$10.00.

(10) On applications for investment adviser's licenses, \$50.00. (As amended Apr. 21, 1943, c. 553, §6.)

(11) For acceptance of service and mailing of process served upon the commissioner under any of the provisions of this act, \$2.00 for each person so served.

No application, notification, request for amendment of a registration, service of process, annual report or filing of offer shall be deemed to be filed or given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. (As amended Act Apr. 23, 1941, c. 547, §14; Apr. 21, 1943, c. 553, §§5, 6.)

(2). Several classes of securities, when filed by same issuer, to be registered in same application are subject to maximum fee of \$200. Op. Atty. Gen. (616B-6), Oct. 1, 1941.

(7). Amended. Laws 1943, c. 553, §5. See above text.

(10). Amended. Laws 1943, c. 553, §6. See above text.

3996-19. Investigations and powers of commission.

—Whenever the commission or commissioner from information in its possession has reasonable ground to believe that any person within three years has sold, or is about to sell, any securities, including securities exempted by Section 2 of the act, and that such securities are or were fraudulent, or are about to be or were sold in a fraudulent manner, or that such person in such sale or attempted sale of such securities has worked or will work a fraud on purchases thereof, or that such person in such sale or attempted sale has violated or is about to violate any of the provisions of this act, the commission or commissioner shall have power to investigate said matters. In any such case the commission or commissioner shall have power to make an examination and investigation of the books, records, papers, accounts, property, business and affairs of such person, and to make or cause to be made on its behalf an audit of the accounts, books and records of such person, and by its order to require such person to permit such examination, investigation and audit to be made, and to require such person to submit to the commission or commissioner his books, papers, records and accounts for the purpose of such examination, investigation and audit. If such securities were or are about to be sold for or on behalf of the is-

suer thereof the commission or commissioner shall have like powers as against such issuer.

If any person or issuer shall fail or refuse to obey any order of the commission or commissioner which it or he is authorized under this act to make, requiring such person to permit an examination, investigation or audit of his books, records, papers or accounts by or on behalf of the commission and to submit the same to the commission for such purpose, the district court, upon petition of the commission or commissioner, subject to the limitations in the Constitution of the State of Minnesota, Article 1, Sections 7 and 10 and in the Constitution of the United States, Articles 4 and 5, shall forthwith and without notice cause a search warrant to be issued directed to the sheriff commanding the sheriff forthwith to search for and seize the books, records, papers and accounts of such person or issuer and deliver them to the commissioner for the purpose of such examination. The petition of the commission or commissioner filed with the District Court, if duly verified and sufficiently specific, or any affidavit filed in such proceedings may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under Sections 10537 to 10540, both inclusive, General Statutes 1923. Any books, papers, records or accounts so seized shall be held by the commissioner for a reasonable length of time for the purpose of making such examination, investigation or audit and shall be then returned to the person from whose possession they were taken, unless otherwise ordered by the court.

It shall have power to take such steps as are necessary to cause the arrest and prosecution of all persons guilty of any such violations. It shall be the duty of each county attorney to prosecute any violation of his act in his county and upon his request or the request of the commission or commissioner, the attorney general shall assist in such prosecution.

The attorney general shall assign from his staff an assistant attorney general who shall be attorney and counsel for the division of securities and the department of commerce, and shall have charge of and may conduct all prosecutions for the violation or prosecutions involving the violation of this act and all other proceedings for the enforcement thereof.

The bureau of criminal apprehension shall be at the service of the division of securities and the department of commerce and at the service of the assistant attorney general assigned thereto, for the purpose of detecting and apprehending any violators of this law and gathering evidence and otherwise aiding in the prosecution of such violators.

The commission or commissioner may by summons or subpoena require the attendance and testimony of witnesses and the production of records, books and papers relating to any matter as to which it has jurisdiction under this act at any designated place, before the commission, commissioner, or any employee of the securities division authorized to conduct such hearing or investigation. Such a summons or subpoena may be issued by any member of the commission. It shall be served in the same manner as a summons or subpoena for witnesses in criminal cases issued on behalf of the state, and all provisions of law relative to a summons or subpoena issued in such cases shall apply to a summons or subpoena issued under this act so far as applicable. The commission, commissioner or any authorized employee of the securities division may require any witnesses to be sworn before testifying and may administer the oath. Any judge of the district court may, upon application by the attorney general on behalf of the commission or commissioner, compel the attendance of witnesses and the giving of testimony before the commission or commissioner in the same manner and to the same extent as before said court.

A natural person who shall claim the privilege of refusing to testify on the ground that his testimony

or evidence, documentary or otherwise, might tend to criminate or subject him to a penalty or forfeiture, shall not be excused on said ground from attending and testifying before the commission or commissioner acting under the provisions of this act; but such natural person, having claimed said privilege and having been required nevertheless to testify, shall not be prosecuted, or subjected to a penalty or forfeiture for, or on account of, any action, matter or thing, concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony. (As amended Act Apr. 28, 1941, c. 547, §15.)

3996-21. Searches and seizures.—Subject to the limitations in the Constitution of the State of Minnesota, Articles 7 and 10 and in Articles IV and V of the amendments to the Constitution of the United States a search warrant may be issued at any time and without notice in any proceeding, civil or criminal, under this act wherein a complaint, information or indictment has been filed; which search warrant may be used for the purpose of obtaining and holding until after trial and decision of the case any books, records, documents, writings, or papers deemed pertinent or material in such proceeding. Any complaint so filed, if duly verified and sufficiently specific, or any affidavit filed in such proceeding, may be taken by the court as authority for the issuance of such search warrant; and all proceedings thereunder shall be substantially the same as like proceedings under Section 10537 to 10540, both inclusive, General Statutes 1923. The court by order made at or subsequent to the issuance of any such search warrant, may provide for the custody, care and control of anything seized pursuant thereto; but if no such order be made, anything so seized shall be delivered by the officer executing the warrant to the court, (or the clerk thereof) from which such warrant issued and shall be there retained until after trial and decision of the case. (As amended Act Apr. 28, 1941, c. 547, §16.)

3996-22. Violations—Penalties.—Any person who violates any of the provisions of this act, or any registration or license or any lawful order of the commission, shall be punished by a fine of not more than \$5,000 or shall be imprisoned for not more than five years or both such fine and imprisonment. (As amended Act Apr. 28, 1941, c. 547, §17; Apr. 21, 1943, c. 553, §7.)

3996-24. Other actions or prosecutions not limited.—No action shall be maintained for relief upon a sale of securities made in violation of any of the provisions of this act, or upon a sale of securities made in violation of any of the provisions of a registration thereof under this act, or for failure to disclose that the sale thereof was made in violation of any of the provisions of this act or in violation of any of the provisions of a registration thereof under this act, or upon any representation with respect to the registration or nonregistration of the security claimed to be implied from any such sale, unless commenced within six years after the date on which said securities were delivered to the purchaser pursuant to such sale, provided that if, prior to the effective date of this section, more than five years shall have elapsed from the date of such delivery, then such action may be brought within a period of one year following such effective date, and provided further that no purchaser of a security otherwise entitled thereto shall bring any action for relief of the character above set forth who shall have refused or failed, within 30 days after the receipt thereof by such purchaser, to accept a written offer from the seller or from any person who participated in such sale to take back the securities in question and to refund the full amount paid therefor by such purchaser, together with interest on such amount from the date of payment to the date of repayment, such interest to be computed at the same rate as the fixed

interest or dividend rate, if any, provided for in such securities, or, if no rate is so provided, at the rate of six per centum per annum, less in every case the amount of any income received by the purchaser on such securities. Any written offer so made to a purchaser of a security shall be of no force or effect unless a duplicate thereof shall be filed with the commissioner of securities prior to the delivery thereof to such purchaser.

Nothing in this section, except as herein expressly set forth, shall limit any other right of any person to bring any section in any court for any act involved in or right arising out of a sale of securities or the right of the state to punish any person for any violation of law. (As amended Act Apr. 28, 1941, c. 547, §18.)

Departure of foreign corporation from Minnesota, subsequent absence therefrom and residence elsewhere, held to have tolled Minnesota Statute of Limitations with respect to action against such corporation. *City Co. of New York v. S.*, (CCA8), 110F(2d)601, aff'g (DC-Minn), 25FSupp948; *Chase Securities Corp. v. V.*, (CCA8), 110F(2d)607.

3996-24a. Investment advisers—Licenses.—No person shall engage in or profess to engage in business as an investment adviser, unless or until he shall have been licensed as an investment adviser as hereinafter provided. Application for such license shall be made on forms prescribed by the commission, and shall contain information as required by the commission with respect to the nature of applicant's proposed business, the method of conducting the same, and the applicant's experience, repute and qualifications. The commission shall have power in connection with such applications to require applicant to furnish in such form as the commission or the commissioner shall designate any additional information deemed necessary to enable it to properly pass on the application before it, and if the applicant has previously engaged in business as an investment adviser, to make an examination of the books, records, business and affairs of such applicant.

Upon compliance by an applicant for an investment adviser's license with the provisions of this act and the requirements of the commission, the commission shall either issue a license as prayed for, or deny the application. The commission shall have power to deny if the applicant is not solvent, is of bad business repute, has violated any of the provisions of this act or any registration, license or lawful order of the commission, or if he does not, in the opinion of the commission, possess the necessary experience and qualifications or if the nature of his proposed business or the method of conducting the same appears to the commission to be such that it would work a fraud, or for good cause to the commission appearing. Denial shall be by written order.

Investment adviser's licenses shall be good for one year from date of issuance, unless sooner suspended, canceled, or revoked, as hereinafter provided, and shall authorize the licensee therein named to transact business as an investment adviser as herein defined and subject to the provisions of this act. An investment adviser's license may be canceled by the commission at any time at the request of the licensee.

The commission or commissioner shall have power to require an investment adviser to make written reports to the commission in such form and detail as the commissioner may require with respect to the nature of his business, the method of conducting the same, and the type and class of his clients and such other information as the commission or commissioner may deem necessary to assist it in determining whether the license should remain in force, whether a licensee has violated or is about to violate any of the provisions of this act, or has engaged in or is about to engage in any fraudulent transaction.

Whenever the commission or commissioner is in possession of information indicating that a licensee is insolvent, is of bad business repute, has violated or is about to violate any of the provisions of this act, or lacks the necessary experience and qualifica-

tions for acting as an investment adviser, or has engaged in or is about to engage in any fraudulent transaction, it may issue its order requiring such licensee to show cause why his license should not be revoked. In any such order the commission shall fix the time and place for hearing thereon, at which time a hearing shall be had. Any license may be suspended pending the final determination of any order to show cause, during which suspension it shall be unlawful for such licensee to transact any business as an investment adviser. After the hearing the commission shall enter its order vacating such order to show cause and suspension, or permanently revoking the license, or making such other disposition of the matter as the facts require. (Act Apr. 28, 1941, c. 547, §19.)

[80.131]

3996-24b. Remuneration from persons other than clients or customers.—No investment adviser who shall recommend the purchase or sale of a security to a client and no licensed dealer or licensed broker acting as a broker for a customer in the purchase or sale of a security shall take or accept any remuneration or other thing of value from any person other than the client or customer in connection with such purchase of sale unless, prior to or contemporaneously with such recommendation in the case of an investment adviser and prior to or contemporaneously with the confirmation of the transaction in the case of a licensed dealer or licensed broker so acting, written disclosure to the client or customer is made of the acceptance or intended acceptance of such remuneration or other thing of value and of the amount thereof. All charges made by an investment adviser for services and all charges by a licensed dealer or licensed broker for services rendered by him as broker or for advice and respect to securities shall be reasonable, and no such charges shall be based upon or measured by profits accrued or to accrue from transactions recommended or carried out by an investment adviser, licensed dealer, or licensed broker. (Act Apr. 28, 1941, c. 547, §20.)

[80.132]

3996-24c. Rules and regulations.—The commissioner may promulgate rules and regulations to carry out the provisions of the act. (Act Apr. 28, 1941, c. 547, §21.)

3996-24d. Persons subject to act not subject to certain other laws.—No person, subject to the provisions of Mason's Minnesota Statutes of 1927, Sections 7771 to 7774, both inclusive, as now or hereafter amended, and subject to this act as now or hereafter amended, and no agent, broker or dealer of, or security issued by, any such person, subject to this act, shall be subject to any of the provisions of Mason's Minnesota Statutes of 1927, Chapter 19. (Act Apr. 28, 1941, c. 547, §22.)

[80.28]

3996-24e. Pending actions or prosecutions.—Except as provided in Mason's Minnesota Statutes of 1927, Section 3996-24, all actions, civil or criminal, pending or which may arise under the act as it was in effect prior to the effective date of this enactment, shall in no wise be affected by this enactment but shall continue under the act as it was in effect prior to the effective date of this enactment. All registrations and licenses in effect on the effective date of this enactment shall be subject to the act and shall continue in effect but may be suspended, canceled or revoked in accordance with the provisions of the act. (Act Apr. 28, 1941, c. 547, §23.)

[80.28]

3996-24f. "Act" as used herein construed.—The word "act" when used in this enactment shall, unless the context otherwise requires, mean Laws of 1925, Chapter 192, as amended by Laws of 1927, Chapter 66; Laws of 1931, Chapter 404; Laws of 1933, Chapter 408; Laws of 1937, Chapter 243 and 481 and Laws of 1939, Chapter 275. (Act Apr. 28, 1941, c. 547, §24.)

3996-24g. Repealer.—Mason's Supplement 1940, Sections 3996-30, 3996-30a and 3996-30b, are hereby repealed. (Act Apr. 28, 1941, c. 547, §25.)

3996-24h. Time of taking effect.—This enactment shall take effect and be in force on and after July 1, 1941. (Act Apr. 28, 1941, c. 547, §26.)

3996-24i. Separability clause.—If any provision, section, subsection, or any other portion of this act be held unconstitutional, the remaining portions of this act shall not be affected thereby but shall be and remain in full force and effect. (Act Apr. 28, 1941, c. 547, §27.)

3996-30 to 3996-30b. [Repealed.]

Repealed. Laws 1941, c. 547.

3996-36. Sale of liquor warehouse receipts is sale of securities.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period of liquor in a duly bonded warehouse in any state other than the state of Minnesota, is hereby declared to be a sale of securities as defined by Mason's Minnesota Statutes of 1927, Section 3996-1, and that the sale of such Warehouse Receipts is hereby permitted and legalized by duly licensed dealers, brokers or agents without having to procure a liquor license, when such liquor is not to be shipped nor imported into the state of Minnesota, except as authorized by law. The provisions of this act shall not apply to the sale of Warehouse Receipts to distillers, manufacturers, or wholesalers of liquor duly licensed as such in the state of Minnesota. (As amended Apr. 24, 1943, c. 645, §1.)

3996-37. Sale of liquor warehouse receipts is sale of securities.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period in bonded warehouses within the state, is hereby declared to be a sale of securities as defined by Mason's Minnesota Statutes of 1927, Section 3996-1, and sales thereof are hereby permitted as provided in Section 1 hereof. (As amended Apr. 24, 1943, c. 645, §2.)

3996-38. Sale of liquor warehouse receipts is sale of securities.—Any broker, dealer or agent, before offering for sale or selling such Warehouse Receipts shall obtain a broker's, dealer's or agent's license, for the sale of securities, from the Commission, under the rules and regulations of the Department of Commerce. (As amended Apr. 24, 1943, c. 645, §3.)

3996-39. Violations and penalties.—Any person who violates the provisions hereof, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than three years, or by both. (As amended Apr. 24, 1943, c. 645, §4.)

SALE OF OIL AND GAS LANDS OR INTERESTS THEREIN

4000-6. Violations—Penalties.—Any person who violates any of the provisions of this act, or any registration or license or any lawful order of the commerce commission, shall be fined not more than \$5,000, or imprisoned for not more than three years, or both fined and imprisoned. (As amended Apr. 24, 1943, c. 646, §1.)

4000-7. Sales exempted from operation of law.—This act shall not apply to any isolated sale not made or occurring in the course of repeated or successive sales; nor to any judicial sale, or any transaction lawfully ordered, authorized, or approved by a court of competent jurisdiction in this state; nor to any sale to any bank or financial institution, under the supervision of any instrumentality or officer of the United States or of the commissioner of banks or of the commissioner of insurance of this state, or licensed broker or licensed dealer. In any complaint, information, or indictment, charging a sale in violation of this act, it shall not be necessary to specifically name or identify persons other than the complainant to whom like sales have been made. (As amended Apr. 24, 1943, c. 646, §2.)