1936 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1936)

(Superseding Mason's 1931 and 1934 Supplements)

Containing the text of the acts of the 1929, 1931, 1933 and 1935 General Sessions, and the 1933-34 and 1935-36 Special Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with digest of all common law decisions.

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court shall certify to the county auditor of the county or counties in which such city, village, town or school district is situated, the amount so determined by the court to be due to the state, if any. (Act Apr. 19, 1929, c. 259, §5.)

3286-6. State Auditor to certify amount due.—On October first of each year, the state auditor shall certify the respective amounts due the state from the various cities, villages, towns and school districts, as shown by the list so filed by the treasurer, and not withdrawn therefrom, including interest computed to July first following, to the county auditor of the county in which any such city, village, town or school district is in whole or in part situated. The county auditor, upon receiving a certificate from the state auditor or a certificate from the clerk of court, as hereinbefore provided, shall include the amount of the state's claim, with 25 per cent added, in the tax levy for general revenue purposes of the municipality liable therefor, and such additional levy shall not be within any limitation imposed by law upon the amount of taxes which may be levied for revenue purposes. Upon completion of the June tax settlement following such levy the county treasurer shall deduct from the amount apportioned to the municipality for general revenue purposes, the amount due the state under this act, including interest, and remit the same to the state treasurer. (Act Apr. 19, 1929, c. 259, §6.)

3286-7. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 19, 1929, c. 259, §7.)

CHAPTER 19

Insurance

3288-1. Public emergency declared.—It is hereby declared that a public emergency exists affecting the health, comfort, and safety of the people of this State, growing out of the abnormal disruption in economic and financial processes, the declaration of a banking holiday in this State and other states and by the Federal Government, the inability of insurers to carry on in a normal and ordinary manner the functions of their business owing to the situation now existing with reference to currency, specie and checks, and other facts and circumstances curtailing and hampering the conduct of the business of insurance in a normal and ordinary manner. (Act Mar. 13, 1933, c. 78, §1.)

3288-2. May suspend provisions of law relating to insurance—Notice.—During the period of the emergency as hereinafter defined, the Commissioner of Insurance shall have the power, with the approval of the Governor, to suspend, in whole or in part, any provision of the laws relating to insurance. In addition to such power and not in limitation thereof, he shall also have power, with the approval of the Governor, during such period to make, rescind, alter and amend rules and regulations imposing any conditions upon the conduct of the business of any insurer which may be necessary or desirable to maintain sound methods of insurance and to safeguard the interests of policyholders, beneficiaries, and the public generally during such period. In the discretion of the Commissioner of Insurance, such rules or regulations may be published in a manner to be prescribed by him or may be otherwise brought to the attention of the insurer or insurers affected in a manner to be prescribed by the Commissioner of Insurance. (Act Mar. 13, 1933, c. 78, §2.)

3288-3. Law shall supersede existing laws.—Such rules or regulations may be inconsistent with existing law, and in such event shall supersede such existing law inconsistent therewith. (Act Mar. 13, 1933, c. 78, §3.)

3288-4. Rule to become ineffective, when.—Such rules or regulations of the Commissioner of Insurance adopted pursuant to this Act shall become ineffective upon the termination of such emergency and thereupon all the existing law which may have been suspended or superseded pursuant to this Act shall become effective. (Act Mar. 13, 1933, c. 78, §4.)

3288-5. Effective—termination.—The period of the emergency herein provided for shall be from the date of the taking effect of this Act until such date as the legislature may, by joint resolution, designate to be the termination thereof or, if the legislature be not in session, the date so designated by proclamation of the Governor. (Act Mar. 13, 1933, c. 78, §5.)

3288-6. Violation a misdemeanor.—Any violation of the provisions of this Act or of any rule or regulation adopted by the Commissioner of Insurance pursuant thereto, shall be a misdemeanor. (Act Mar. 13, 1933, c. 78, §6.)

3288-7. Definitions.—The word "insurer" as used in this Act includes all corporations, associations, societies, and orders to which any provision of the laws relating to insurance is applicable. (Act Mar. 13, 1933, c. 78, §7.)

3288-8. Provisions separable.—If any provision of this Act, or the application of such provision to any insurer or circumstance, shall be held invalid, the remainder of this Act, or the application of such provision to insurers or circumstances other than those as to which it is held invalid, shall not be affected thereby. (Act Mar. 13, 1933, c. 78, §8.)

3288-9. Effective March 15, 1933.—This Act, being an Emergency Act, shall be of no force or effect after March 15, 1935. (Act Mar. 13, 1933, c. 78, §9.)

3302. Computation of net value.
Reserve maintained by life insurance company, held to constitute unearned premiums for purpose of computing federal income tax. 22 U. S. Board of Tax Appeals 784. See Dun. Dig. 4720.

3304. Reserves.
4.
22 U. S. Board of Tax Appeals 784.

GENERAL PROVISIONS

3312. Definitions.
22 U. S. Board of Tax Appeals 784.
This section defines "net assets" as used in section 3335. Op. Atty. Gen., Dec. 3, 1931.
Since there is no longer a constitutional stockholder's liability, such item should not be taken into consideration as an asset of a fire insurance company. Op. Atty. Gen., Dec. 3, 1931.

3313. Acceptance of laws.
Insurance contract solicited by foreign corporation without compliance with state insurance laws, held not interstate commerce. 275US274, 48SCR124, aff'g 169M 516, 211NW478.

3314. Insurance defined—Unlawful contracts—Contracts deemed made in this state.
275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.
Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, aff'g 181Minn518, 233NW310; §3512; note 10.
Indemnity bond to bank against loss from taking counterfeit collateral, held not to extend to unsigned bills of lading, the goods described in which were never delivered to the carrier. 48F(2d)611. See Dun. Dig. 4336.
Loss arising from cracking of opal because alone of its inherent tendency to disintegrate cannot be recovered under an "all risk" transportation policy. 172M13, 214NW473.
The insurance business is affected with public interest and is subject to governmental regulations. 175M73, 220 NW425.

In action by assured in indemnity policy to recover amounts paid in settlement of negligence suits which defendant refused to defend, evidence held to sustain finding that plaintiff complied with terms of policy requiring "immediate notice." Farrell et al. v. N., 183M 65, 235NW612. See Dun. Dig. 4875e(45).

An oral contract of present insurance, or an oral contract for insurance effective at a future date, is valid. Schmidt v. A., 190M585, 252NW671. See Dun. Dig. 4647.

Oral contract for renewal of existing insurance may be valid. Id. See Dun. Dig. 4691a.

Negotiations in which the insured directs the agent to "renew" or "rewrite" existing insurance or "go ahead and write it up again," and he agrees to do so, are sufficient if parties intend a renewal, and evidence an oral contract of renewal of insurance. Id. See Dun. Dig. 4691a.

When parties agree upon a renewal of existing insurance and terms are not detailed, insurance like expiring insurance is intended. Id. See Dun. Dig. 4691a.

Mere delay in passing upon an application for insurance cannot be construed as an acceptance thereof by the insurer which will support an action ex contractu. Schliep v. C., 191M479, 254NW618. See Dun. Dig. 4652.

Conception of legal relations between an applicant for insurance and insurance company is essentially and fundamentally same as that between parties negotiating other contracts, and as such is purely contractual. Id. See Dun. Dig. 4646a.

An agreement to attend to communication with relatives or friends of automobile owner in an emergency, to furnish bail bonds, and to defend in civil or criminal litigation, furnish tow service and roadside repairs and mechanical advice, constituted an insurance contract though there was no agreement to answer for any judgment resulting from litigation. State v. Bean., 193M113, 258NW18. See Dun. Dig. 4640.

In an action to reform an insurance policy and to recover damages thereunder as so reformed, findings of fact were adverse to plaintiff's contentions. Miller v. N., 193M423, 258NW747. See Dun. Dig. 8347.

Certificate of Membership in the "Steele County North Dakota Benevolent Society" held to constitute "Insurance" subject to supervision of the commissioner. Op. Atty. Gen., June 12, 1931.

Plan of certain so-called mutual benefit or benevolent societies held to constitute the writing of insurance. Op. Atty. Gen., Oct. 7, 1931.

So-called "service contract" held to constitute insurance contract and person selling them insurance agent. Op. Atty. Gen., Sept. 16, 1933.

Articles of incorporation for formation of social and charitable corporations which would authorize company to transact business of death and disability benefit payments upon assessment plan may not be filed with the secretary of state, but such corporation must comply with insurance laws. Op. Atty. Gen. (92a-1), May 11, 1935.

The making of a contract of insurance in Minnesota. 17MinnLawRev567.

Delay in acting on application for insurance—tort liability. 33MichLawRev907.

8315. Capital stock required and business which may be transacted * * * * * * *

(a) 15. Funeral benefits to be paid in money.—To make contracts providing that upon the death of the assured a funeral benefit will be paid in money, the aggregate amount of which shall not exceed $150.00 upon any one life. Provided, however, that any corporation that has been licensed to do business for three successive years may make contracts not to exceed $300.00 upon any one life; provided further that any corporation licensed under this act which now or hereafter has a paid up capital of $15,000.00, and maintains with the commissioner of insurance a deposit of $15,000.00, may make life insurance contracts not to exceed $600.00 on any one life and with or without indemnity for total and permanent disability such as are usually contained in life insurance contracts.

No such insurance company shall be operated directly or indirectly in affiliation or connection with any funeral director or undertaking establishment or contract by assignment or otherwise to pay such insurance or its benefits or any part of either to any funeral director or undertaking establishment predetermined or designated by it so as to deprive the family or representatives of the deceased policyholder from, or in any way to control them in, obtaining for his funeral and burial, funeral services and supplies in the open market.

Provided, that nothing herein contained shall apply, nor shall it be construed to apply in any way to any co-operative burial association. (As amended Mar. 9, 1933, c. 73.)

A foreign insurance company whose articles authorize it to write fire and tornado insurance, and also fidelity insurance, may not be licensed to do a fidelity insurance business in this state, although it does not propose to do a fire or tornado business here. State v. Brown, 189 M497, 250NW2. See Dun. Dig. 4723.

(a) (9).

There was sufficient proof to go to jury on question whether a robbery had occurred, entrance of robbers with a command to "stick them up" coupled with fatal shooting being sufficient. Zalik v. E., 191M136, 253NW114. See Dun. Dig. 4875K.

In action on burglary policy, loss of money may be established by circumstantial evidence. Id. See Dun. Dig. 4875j.

Under terms of an insurance contract where there was no liability "unless books and accounts are kept by the assured and the loss or damage can be accurately determined therefrom," lower court correctly instructed the jury that if, as practical men and women, they could determine loss from books and accounts then provision was not violated. Id. See Dun. Dig. 4875j.

To constitute theft within automobile theft insurance policy, there must be a present criminal intent to deprive the owner of his property permanently. Kovero v. H., 192M10, 255NW93. See Dun. Dig. 4875i.

(a) (12).

A complaint alleging that insurer, joined with owner of automobile in action for personal injuries, agreed in the policy to pay all parties, including plaintiff, the amount of any claim allowed by reason of injuries or damages sustained, held not to state a cause of action against the insurer. Charlton v. Van Etten (DC-Minn), 55F(2d)418. See Dun. Dig. 4875c, 7327.

Where liability insurer takes over the defense of an action against insured it cannot deny liability on an automobile policy. General Tire Co. v. S., (CCA8), 65F (2d)237. See Dun. Dig. 4875d.

Where truck covered by liability policy was being used for a purpose other than that prescribed by the policy at the time the accident occurred recovery could not be had on the policy. Id. See Dun. Dig. 4875c.

Garage employee delivering automobile to owner who was a storage customer held excluded in coverage in automobile liability insurance policy. Wendt v. W., 185 M189, 240NW470. See Dun. Dig. 4875c.

In action for injury in automobile collision where liability insurer was garnishee defendant, it was proper to enter judgment against the garnishee without formal decree of reformation where it appeared that it was intended to insure defendant owner and not mortgagee named therein. Logue v. D., 185M337, 241NW51. See Dun. Dig. 4008, 4649.

Evidence held to show that automobile liability policy was intended to insure owner against liability instead of mortgagee named therein. Logue v. D., 185M337, 241NW 51. See Dun. Dig. 4875c.

Where neither of partners is liable, insurer who insured partnership against automobile liability is not liable. Belleson v. S., 185M537, 242NW1. See Dun. Dig. 4875c.

An automobile policy insuring against direct loss or damage by theft held to cover general depreciation not made good by repair and replacement, notwithstanding a condition of policy that liability should be limited to "what it would then cost to repair or replace the automobile or parts thereof with other of like kind and quality." Ciresi v. G., 187M145, 244NW688. See Dun. Dig. 4875l.

Award of appraisers for damage to automobile under theft policy, held not responsive to issues and so properly set aside. Ciresi v. G., 187M145, 244NW688.

Evidence held not to justify a finding that defendant by word or conduct estopped itself from asserting that its insurance policy did not cover loss or damage to car in plaintiff's possession. Root Motor Co. v. M., 187M559, 246NW118. See Dun. Dig. 4676.

Evidence sustained findings that through mutual mistake of insured and defendant there was inserted in policy in suit name of a wrong person as owner of auto insured. Hartigan v. N., 188M48, 246NW477. See Dun. Dig. 4649.

To justify a reformation of automobile accident policy evidence must be clear, persuasive and convincing. Hartigan v. N., 188M48, 246NW477. See Dun. Dig. 8347.

Insured under collision policy was entitled to recover part of premium unearned when insurer converted car and rendered policy useless. Breuer v. C., 188M112, 246 NW533. See Dun. Dig. 4645.

Automobile stored on open lot awaiting repair in owner's shop in adjoining garage was not within coverage of theft policy excluding cars while stored in any open lot or unroofed space, nor was it temporarily outside buildings while it was being transported or moved in ordinary course of business. Berry Chevrolet Co. v. A., 188M123, 246NW547. See Dun. Dig. 4875l.

Where a garnishee insurer defends against its liability for a defendant's negligence in an automobile accident case in which a passenger guest was plaintiff, and defendant at first asserted to garnishee that she entered curve at about 42 miles per hour and upon trial testified

that she did so at about 45 miles per hour, variance alone is not so material as to sustain a claim that she conspired with her guest to defraud garnishee. Donahue v. P., 188M625, 248NW48. See Dun. Dig. 4875f.

In action by partially paid insured to recover damages to automobile, it was error to reject offer of defendant to prove that plaintiff had transferred cause of action to insurer, thereby ceasing to be real party in interest. Flor v. B., 189M131, 248NW743. See Dun. Dig. 7315.

Where an insured has not been paid in full by insurer for damages to automobile, action should be brought by insured against wrongdoer to recover full loss, and first reimburse himself for his loss and expenses and then hold balance in trust for insurer. Id.

Truck temporarily used, held not to come within coverage of a liability insurance policy covering other different trucks. Clarno v. G., 190M268, 251NW268. See Dun. Dig. 4875c.

A special indorsement on policy extending coverage to other automobiles thereafter "acquired" and providing that company shall report purchase of "such automobiles" to insurer for indorsement on policy at a pro rata premium, held to apply only to automobiles which company should thereafter acquire some title to purchase or otherwise. Id. See Dun. Dig. 4875c.

Liability insurance on truck owned by one person, held to cover such truck while temporarily used by a third party. Id. See Dun. Dig.

Where one policy of public liability insurance covered primary risk of independent contractor, another secondary liability of general contractors, and carrier of primary insurance for independent contractor paid a loss for personal injury caused by his driver and motor truck, carrier of insurance on secondary liability of general contractors is not liable as for contribution. Commercial Casualty Ins. Co. v. H., 190M528, 252NW434. See Dun. Dig. 4805.

Evidence held to sustain finding that defendant through its agent made an oral contract of renewal of collision insurance. Schmidt v. A., 190M585, 252NW671. See Dun. Dig. 4691a.

Finding of the jury that collision coverage of policy was not canceled is sustained; evidence of such cancellation being sending of a written notice by company to plaintiff which, upon his testimony, was not received. Id. See Dun. Dig. 4694.

Evidence held to sustain finding that defendant was driving automobile on his own business and not on behalf of his employer, a public garage. Barry v. S., 191M 71, 253NW14. See Dun. Dig. 5844, 5845.

Provisions of insurance policy that coverage shall not extend to or be available to any public garage, automobile repair shop, sales agency, and/or the agents or employees thereof, do not exclude from coverage an employee of such a garage or repair shop while on a personal business trip, outside of his hours of service, not on any business for his employer, and driving an automobile not owned or furnished by his employer, insurance policy in question not being one insuring owner or operator of garage, but one insuring owner of automobile by whose consent car was driven. Id. See Dun. Dig. 4875c.

Court was justified in finding that there was no such failure on part of the defendant to co-operate with insurers as to avoid liability on part of insurers to these persons injured in automobile accident. Id. See Dun. Dig. 4875f.

Automobile liability insurers can readily release themselves from liability to members of family of assured by so providing in their policy contracts. Albrecht v. P., 192M557, 257NW377. See Dun. Dig. 4875c.

Evidence held to sufficiently support conclusion that appellant promised to pay premium for liability insurance issued in name of a taxicab association and its individual members, and obligation thus assumed was an original and primary one, not within statute of frauds. Kenney Co. v. H., 194M357, 260NW358. See Dun. Dig. 4875c.

Insurer's defense of assured as affecting insurer's right to deny liability under policy. 15MinnLawRev682.

Cooperation of insured with liability insurer. 19Minn LawRev444.

(a)(13).

To free insurer under employers' public liability policy from liability to insured for amount paid in settlement for death, on ground that there was no liability on part of insured because decedent's contributory negligence appeared as matter of law, it was incumbent upon insurer to affirmatively show absence of liability. Klemmer v. O., 188M209, 246NW896. See Dun. Dig. 2616, 4868d, 7032.

(a)(15).

Amended Laws 1933, c. 73.

Amendment by Laws 1933, ch. 73, is constitutional. Op. Atty. Gen., May 24, 1933.

Interlocking stock owner, prevents insurance company from transacting an undertaking business with funeral home. Id.

3318. Retaliatory provision.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

3319. Deposits with commissioner.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

Deposit by domestic life insurance company with commissioner may not be released so long as any policy written by such company remains in force. Op. Atty. Gen. (249a-11), June 23, 1934.

3321. Agents and persons authorized to act.

Adjuster for collision insurer had authority to agree to take possession of insured car and repair it, and his authority was not limited to mere agreement as to amount of loss. Breuer v. C., 188M112, 246NW533. See Dun. Dig. 4790.

Employe of building contractor held to have acted solely for fire insurance company in writing insurance on building constructed. Consolidated Lumber Co. v. M., 189M370, 249NW578. See Dun. Dig. 4708.

Insurance agent held not entitled to commissions on renewal premiums received by the company after termination of the agency, the agency contract providing that no further commissions shall accrue to the agent, except those "earned on policies for one year from their date," the date referred to meaning the date of the policy. Fabian v. P., (DC-Minn), 5FSupp806. See Dun. Dig. 4712.

Evidence held to show that insurance premiums belonged to agency accounting to insurers and not to subagent or receiver of corporation in which subagent did business. St. Paul Home Co., 189M566, 250NW451.

Insurance agent collecting delinquent premiums on hail insurance policy which carries his name as "agent" has authority to waive a forfeiture provision. Green v. M., 190M109, 251NW14. See Dun. Dig. 4688.

3322. Capital stock to be paid in full—Investment of funds.—

* * * *

2. Notes or bonds, approved by the commissioner, secured by first mortgage on improved real estate in this or any other state, or in the Dominion of Canada, worth at least twice the amount loaned thereon, not including buildings unless insured by policies in an amount approved by the commissioner payable to and held by the security holder, or by a trustee for the security holder. (As amended Apr. 10, 1929, c. 149.)

3. Stock or bonds at market value, approved by the Commissioner, upon which stock interest or dividends of not less than three per cent have been regularly paid for three years immediately preceding the investment, of any public service corporation incorporated by or under the Laws of the United States, or any State, or the Dominion of Canada, or any Province thereof; or in the stock or guaranty fund certificates of any insurance company; or in the stock or bonds of any real estate holding company whose real estate is used in whole or in part in the transacting of the insurance business of such insurance company, either directly or by reinsurance, or in the fee to real estate used in whole or in part in such business; or in the stock or bonds of any corporation owning investments in foreign countries used for purposes of legal deposit, when the insurance company transacts business therein direct or as re-insurance. The making of investments under this Sub-division shall be subject to the approval of the Commissioner of Insurance. (As amended Mar. 28, 1929, c. 100.)

* * * *

Provision requiring that capital shall be paid in full in cash refers to amount of capital stock authorized by articles of incorporation and not to subscribed stock. Op. Atty. Gen. (249a-17), July 20, 1935.

3325-1. Investment in home owners' loan corporation bonds.—The capital, surplus and other funds of every domestic life insurance company and fraternal beneficiary association, whether incorporated by special Act or under the general law (in addition to all other investments now permitted by law), may be invested in bonds issued by Home Owners' Loan Corporation in accordance with the provisions of the federal "Home Owners' Loan Act of 1933," in exchange for mortgages on homes, contracts for deed and/or real estate held by it. (Act Jan. 9, 1934, Ex. Ses., c. 71, §1.)

Sec. 2 of act Jan. 9, 1934, cited, provides that the act shall take effect from its passage.

3326. Deposit with insurance company.

See §2327.

3334. Policy to embrace conditions.

Enge v. J., 183M117, 236NW207; note under §3370.

Policy provisions will be construed most favorably to the insured. Wilson v. M., 187M462, 245NW826. See Dun. Dig. 4659.

Doubtful construction in policy must be resolved against insurer who writes policy. Maze v. E., 188M139, 246NW737. See Dun. Dig. 4659.

Any reasonable doubt as to meaning of employers' public liability policy must be resolved in favor of insured. Klemmer v. O., 188M209, 246NW896. See Dun. Dig. 4659.

Any provision of an insurance policy operating to work a forfeiture in favor of insurer may be waived by it. Green v. M., 190M109, 251NW14. See Dun. Dig. 4686.

3335. Reinsurance—Reports of—Maximum, etc.

The amount of a single risk assumed by any fire insurance company may not exceed the limitations specified, and the fact that a portion of such risk may be reinsured has no bearing. Op. Atty. Gen., Dec. 3, 1931.

The expression "net assets" is defined in section 3312. Op. Atty. Gen., Dec. 3, 1931.

3339. Mergers and consolidations—Notice of hearing.—The insurance commissioner shall thereupon issue an order requiring notice to be given by mail to each policy holder or such company of such petition and the time and place at which hearing thereon will be held, and shall publish the said notice in five daily newspapers, once in each week, for at least two weeks before the time appointed for the hearing upon said petition, provided, however, that whenever a fraternal benefit society organized under the laws of this state, having an insurance membership in good standing at the time of reinsurance, merger, or consolidation of not more than five thousand members and which has been engaged in business for more than 15 years prior to such time, is reinsured by or consolidated or merged with any Minnesota life insurance company, said order and notice need not be given, but in lieu thereof, the insurance commissioner shall thereupon issue an order of notice specifying the time and place at which hearing thereon will be held and shall cause said order to be published daily for seven consecutive days in five daily Minnesota newspapers, the last such publication to be not less than two weeks prior to the time appointed for such hearing.

In lieu of proceeding under the foregoing paragraph of this Section and Section 2 of Chapter 303, Laws of 1905 [§3338], any accident or health company may consolidate and enter into a contract of re-insurance with any other company by filing with the commissioner of insurance a copy of such contract and all papers relating thereto, which consolidation and reinsurance shall take effect upon such filing and the mailing to each person holding a policy so reinsured a notice thereof. Provided, that if the holders of not less than five per cent of such policies so reinsured shall within thirty days thereafter file a petition with the commissioner of insurance for a hearing on the question of such reinsurance, the commissioner shall, and without such petition may, order a hearing as provided in Section 4, Chapter 303, Laws of 1905 [§3340], notice of which shall be given by the company by mail to each holder of such policy, so reinsured, at least ten days before such hearing, and thereupon proceedings shall be had as provided in Sections 4 and 5, Chapter 303, Laws of 1905 [§§3340, 3341]. ('05, c. 303, §3; G. S. '13, §3518; '15, c. 333, §1; Mar. 9, 1929, c. 62, §1.)

3347. Taxation of insurance companies.—Every domestic and foreign company, except town and farmers' mutual insurance companies and domestic mutual insurance companies other than life shall pay to the State Treasurer on or before April 30th, annually, a sum equal to two per cent of the gross premiums less return premiums on all direct business received by it in this state, or by its agents for it, in cash or otherwise, during the preceding calendar year, and if unpaid by said date a penalty of ten per cent shall accrue thereon, and thereafter such sum and penalty shall draw interest at the rate of one per cent per month until paid. Provided, however, that every domestic Mutual Insurance Company shall pay to the State Treasurer on or before April 30th, annually, a sum equal to two per cent of the gross direct fire premiums, on policies effective subsequent to January 1, 1930, less return premiums on all direct business received by it, or by its agents for it, in cash or otherwise, during the preceding calendar year upon business written in municipalities in this state maintaining organized Fire Departments, and provided that the existence of such Department has been certified to in accordance with General Statutes 1923, Section 3737 and if not paid on or before April 30th a penalty of ten per cent shall accrue thereon, and thereafter such sum and penalty shall draw interest at the rate of one per cent per month until paid. Provided, further, that every town and farmers' mutual insurance company shall pay to the State Treasurer on or before April 30th, annually, a sum equal to two per cent of the gross direct fire premiums, on policies effective subsequent to June 30, 1935, less return premiums on all direct business received by it, or by its agents for it, in cash or otherwise, during the preceding calendar year upon business written in municipalities in this state maintaining organized Fire Department, and provided that the existence of such Department has been certified to in accordance with General Statutes 1923, Section 3737, and if not paid on or before April 30th a penalty of ten per cent shall accrue thereon, and thereafter such sum and penalty shall draw interest at the rate of one per cent per month until paid. "Return premiums" as used in this section shall mean any dividend and any unused or unabsorbed portion of premium deposit or assessunabsorbed portion of premium deposit or assessment that shall be applied toward the payment of any premium, premium deposit or assessment due from the policyholder or member upon a continuance or renewal of the insurance on account of which such dividend was earned or premium deposit or assessment paid, and also any portion of premium returned by the company upon cancellation or termination of a policy or membership, except surrender values paid upon the cancellation and surrender of policies or certificates of life insurance.

In the case of every domestic company such sums shall be in lieu of all other taxes, except those upon real property, owned by it in this state, which shall be taxed the same as like property of individuals, and in the case of every foreign company such sum shall be in lieu of all other taxes, except those upon real and personal property owned by it in this state, which shall be taxed the same as like property of individuals. (R. L. '05, §1625; '07, c. 321, §1; G. S. '13, §3302; '15, c. 184, §1; '19, c. 515, §2; '21, c. 341, §1; '27, c. 421; Apr. 10, 1929, c. 148, §1; Apr. 29, 1935, c. 328.)

The United Mutual Life Insurance Company, insofar as it is transacting the insurance business of the Knights of Pythias, is to be regarded as a fraternal beneficiary association. Op. Atty. Gen., May 19, 1931.

After transformation of fraternal beneficiary association into a legal reserve company, assessments collected on fraternal benefit certificates by new company are exempt from 2% tax. Op. Atty. Gen., May 18, 1933.

State may impose larger privilege tax on fire insurance companies doing business in cities of first class than on companies doing business in smaller cities and villages throughout the state. Op. Atty. Gen., Dec. 7, 1933.

Tax which §3347 imposes on premiums received by foreign insurance companies is not a tax on property but is a privilege tax, and such section does not limit or affect power of state to tax stock in such insurance companies as moneys and credits under §2337. Op. Atty. Gen. (249a-18), Sept. 28, 1934.

PROVISIONS COMMON TO ALL COMPANIES

3348. Definitions.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

So-called "service contract" held to constitute insurance contract and person selling them insurance agent. Op. Atty. Gen., Sept. 16, 1933.

Plan for sale of trust fund certificates containing a provision for insurance by subscriber held to include insurance feature which would require salesman to obtain a license as insurance agent, as well as license as agent for sale of securities. Op. Atty. Gen., Dec. 27, 1933.

3349. Licenses.
275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

3350. Agents to be licensed.
Petition of life insurance company for reinsurance of its risks in another life insurance company held to contemplate a consolidation of companies and not reinsurance, and state commerce commission, and not the reinsurance commission, had exclusive jurisdiction. Op. Atty. Gen. (249b-16), June 25, 1934.

3366. Violation of law—Misdemeanor—Penalty.
275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.
Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, aff'g 181Minn518, 233NW310; §3512, note 10.

3370. Misrepresentation by applicant.
174M498; 219NW759; note under §3399.
In general.
Statements made in application as to prior illnesses, attendance of physicians, and as to health were not as a matter of law willfully false and intentionally misleading. Elness v. P., 190M169, 251NW183. See Dun. Dig. 4673.
Provision that no misrepresentation in application avoids policy unless made with intent to deceive or unless matter represented increased risk of loss held not to govern policy issue without medical examination. Schmidt v. P., 190M239, 251NW683. See Dun. Dig. 4666, n. 23.
Material misrepresentations in an application for insurance, if made with intent to deceive and defraud, or if the matter misrepresented increases the risk of loss, even though not made with intent to deceive and defraud, will avoid the policy. Domico v. M., 191M215, 253 NW538. See Dun. Dig. 4673.
Concealment of a moral hazard. 19MinnLawRev810.
Acts of agent.
Hafner v. P., 188M481, 247NW576; note under §3396.
Evidence.
Evidence held not to require finding that untrue representations were made with intent to deceive or defraud, or related to matters which increased the risk. 172M334, 215NW428.
Evidence held conclusive that insured willfully deceived insurer in failing to answer questions in application as to medical attention fully or honestly. Harnischfeger Sales Corp. v. N., —M—, 261NW580. See Dun. Dig. 4670.
Burden of proving that answers in application are false is upon insurer, but, having shown that answers are false or incomplete, burden shifts to insured or his beneficiary to show that false answer or omitted information related to a matter of negligible importance. Id.
Questions for jury.
Whether plaintiff, in his application to become a member of mutual accident association, made material false representations, was a fact question for jury. Jensvold v. M., 192M475, 257NW86. See Dun. Dig. 4666, 4871.
In suit on fire insurance policies to recover value of icehouse totally destroyed by fire, held for jury whether insured's nondisclosure of a contract, which provided that insured icehouse would be destroyed when land on which it was situated was sold, or in any event within 10 years was fraudulent, and whether existence of this contract increased the risk. Romain v. T., 193M1, 258NW289. See Dun. Dig. 4666, 4769.

LIFE INSURANCE COMPANIES

3372. Defined.
Agreement between plaintiff and officer of mutual insurance company relative to purchase of the company and employment of officer, held against public policy. 176M4, 222NW341.

3373. Prerequisites of all life companies.
Evidence held to show a contract of insurance and not a mere unaccepted application therefor. 172M482, 215NW 836.

3376. Discrimination in accepting risks.
Where insurable age of an applicant for life insurance changed from 34 to 35 on April 14 and application requested policy to be dated April 1 and applicant gave note payable May 1 for first premium but this was not paid until about June 20 and second premium was payable July 1 by terms of the policy, lower premium rate at the age of 34 was sufficient consideration for the shorter coverage effected by the first premium, and the contract making July 1 the due date of the second premium was valid as not being discriminatory. First Nat. Bank v. N., 192M609, 255NW831. See Dun. Dig. 4640, 4646b, 4657.

3377. Discrimination, rebates, etc.
First Nat. Bank v. N., 192M609, 255NW831; note under §3376.

3380. Solicitors agents of company.
Braman v. M. (USCCA8), 73F(2d)391.
Effect of falsification of application by soliciting agent. 16MinnLawRev422.

3384. [Repealed].
Repealed by Laws 1929, c. 111, §2, post, §3384-1, which provides for investments.

3384-1. Investment of domestic life insurance companies funds.—The capital, surplus and other funds of every domestic life insurance company, whether incorporated by special act or under the general law (in addition to investments in real estate as otherwise permitted by law) may be invested only in one or more of the following kinds of securities or property:

(1). Bonds or treasury notes of the United States; bonds of this state or of any state of the United States, or of the Dominion of Canada or any province thereof; and bonds of any county, city, town, village, organized school district, municipality or civil division of this state, or of any state of the United States or of any province of the Dominion of Canada; debentures issued by the Federal Housing Administrator under the provisions of Title 11 of the National Housing Act, and acts amendatory thereto; obligations of national mortgage associations or similar credit institutions now or hereafter organized under the provisions of Title 111 of the National Housing Act, and acts amendatory thereto. (As amended Apr. 29, 1935, c. 365, §1.)

(2). Notes or bonds secured by first mortgage, or trust deed in the nature thereof, on improved real estate in this or any other state of the United States having a value of at least twice the amount of the loan secured thereby, but no improvement shall be included in estimating such value unless the same shall be insured against fire by policies payable to and held by the security holder or a trustee for its benefit; also, if approved by the commissioner of insurance, notes or bonds secured by mortgage or trust deed upon leasehold estates in improved real property where forty years or more of the term is unexpired and where unencumbered except by the lien reserved in the lease for the payment of rentals and the observance of the other covenants, terms and conditions of the lease and where the mortgagee, upon default, is entitled to be subrogated to, or to exercise, all the rights and to perform all the covenants of the lessee, provided that no loan on such leasehold estate shall exceed fifty per cent of the fair market value thereof at the time of such loan, and the value thereof shall be shown by the sworn certificate of a competent appraiser; notes or bonds secured by mortgage, or trust deed in the nature thereof, insured by the Federal housing administrator under the provisions of Title 11 of the National housing act, and acts amendatory thereto, or which he makes a commitment to insure under such provisions, provided that the principal of such notes or bonds shall not exceed 80 per cent of the fair market value of the premises described in such mortgage or trust deed at the time such investment is made. (As amended Apr. 29, 1935, c. 365, §2.)

(3). Bonds or obligations of railway companies, street railway companies and other public utility corporations incorporated under the laws of this state, the United States or any state thereof, or the Dominion of Canada or any province thereof, which shall not be in default as to the principal or interest on any outstanding issue of bonds; the debentures of farm mortgage debenture companies organized under the laws of this state and federal farm loan bonds.

(4). Stocks of national banks and state banks and of municipal corporations, and certificates of deposit of such banks, provided that not more than five per cent of the admitted assets of the company shall be invested in such certificates of deposit; also stocks of railway companies, street railway companies and other public utility corporations which have paid dividends in cash upon their stock at the rate of not less than three per cent for a period of three years preceding the investment.

(5). In equipment obligations or equipment trust certificates; Provided, that such obligations or certificates mature not later than fifteen years from their date and are issued or guaranteed by a corporation to which a loan or loans for the construction, acquisition, purchase or lease of equipment have been made or approved by the Interstate Commerce Commission, under authority conferred by act of Congress of the United States of America or are secured by or are evidence of a prior or preferred lien upon interest in, or of reservation of title to, the equipment in respect of which they have been sold, or by an assignment of or prior interest in the rent or purchase notes given for the hiring or purchase of such equipment, and provided further, that the total amount of principal of such issue of equipment obligations or trust certificates shall not exceed seventy-five per cent of the cost or purchase price of the equipment in respect of which they were issued. The remaining twenty-five per cent of said cost or purchase price having been paid by or for the account of the railroad so constructing, acquiring, purchasing or leasing said equipment, or by funds loaned or advanced for the purpose by the government of the United States or one of its agencies or instrumentalities and subordinated in the event of default, in respect of the lien or interest thereof upon or in such equipment or rent or purchase notes, to the lien or interest of said prior or preferred equipment obligations or equipment trust certificates.

(6). Stocks of any life insurance company, provided that not more than four per centum of the admitted assets of any domestic life insurance company may be invested in stocks of other life insurance corporations; bonds, debentures, or the preferred or guaranteed stocks, of any solvent institution incorporated under the laws of the United States or of any state thereof, where any such institution, or in the case of guaranteed stocks the guaranteeing corporation, during each of the five years next preceding such investment shall have earned a sum applicable to dividends equal at least to four per centum upon the par value (or in the case of stock having no par value then upon the value upon which such stock was issued) of all its capital stock outstanding in each of such five years, and provided further that no such life insurance company shall invest in or loan on any such preferred stock in excess of ten per cent of the total issued and outstanding preferred stock of such institution, nor more than twenty per cent of the unassigned surplus and capital of such life insurance company.

(7). Promissory notes maturing within six months, secured by the pledge of registered terminal warehouse receipts issued against grain deposited in terminal warehouses as defined in Section 5016, General Statutes of Minnesota for 1923. At the time of investing in such notes the market value of the grain shall exceed the indebtedness secured thereby, and the note or pledge agreement shall provide that the holder may call for additional like security or sell the grain without notice upon depreciation of the security. The insurance company may accept, in lieu of the deposit with it of the warehouse receipts, a trustee certificate issued by any national or state bank at a terminal point, certifying that the warehouse receipts have been deposited with it and are held as security for the notes. The amount invested in the securities mentioned in this subdivision shall not at any time exceed twenty-five per cent of the unassigned surplus and capital of the company.

(8). Loans on the security of insurance policies issued by itself to an amount not exceeding the net or reserve value thereof; and loans on the pledge of any of the securities enumerated in subdivisions (1) to (7) above, to the extent of the investment permitted in such securities, but not exceeding eighty per cent of the market value of stocks and ninety-five per cent of the market value of any other securities, and in all loans, except as otherwise provided by law in regard to policy loans, reserving the right at any time to declare the indebtedness due and payable when in excess of such proportion or upon depreciation of security.

No investment or loan, except policy loans, shall be made by any such life insurance company, unless the same shall first have been authorized by the board of directors, or by a committee thereof charged with the duty of supervising such investment or loan. No such company shall subscribe to or participate in any underwriting of the purchase or sale of securities or property, or enter into any transactions for such purchase or sale on account of said company jointly with any other person, firm or corporation; nor shall any such company enter into any agreement to withhold from sale any of its property, but the disposition of its property shall be at all times within the control of its board of directors. (Act Mar. 30, 1929, c. 111, §1.)

3387. Who entitled to proceeds of life policy.

Creditors could not impress proceeds of life insurance policy with claims based on fraud of which insured was guilty after issuance of policies. Cook et al. v. P., 182M 496, 235NW9. See Dun. Dig. 4801, 3867a.

Where father paid entire consideration for insurance on life of son, policy payable to son's estate but assigned at once to father, agreement of father that proceeds of policy should go to son's wife was an executory gift not to be judicially endorsed. Wunder v. W., 187M108, 244 NW682. See Dun. Dig. 4028, 4812, 4813.

A life insurance policy which contains a supplemental contract of disability or accident insurance which is not within exceptions provided for in subd. 2, §3426, is in its disability or accident provisions subject to health and accident code, and disability benefits (other than death benefits) must be payable to the insured. Joyce v. N., 190M66, 252NW427. See Dun. Dig. 4869a.

Wife as beneficiary in life policy was proper party plaintiff in action on policy though insured had failed to schedule policy as an asset or claim it as exempt in bankruptcy. Kassmir v. P., 191M340, 254NW446. See Dun. Dig. 4734.

Section 9214, providing that all actions not enumerated in certain preceding sections shall be tried "in a county in which one or more of the defendants reside when the action was begun," does not apply to statutory proceeding provided by §9261. State v. District Court, 192M602, 258NW7. See Dun. Dig. 10104, 10121, 4892, 4893.

Where there is a statutory proceeding in nature of interpleader, court in which cause is properly pending, and it alone may exercise jurisdiction. Id. See Dun. Dig. 4892.

3388. Exemption in favor of family—Etc.

Cook et al. v. P., 182M496, 235NW9; note under §3387.

3392. Automatic paid-up or extended insurance in certain cases.

Provision in life policy, that upon default it should be automatically extended without benefit of double indemnity, was valid. Johnson v. C., 187M611, 246NW354, Johnson v. R., 187M621, 246NW358. See Dun. Dig. 4816.

Deduction of loans from cash surrender value under terms of contract upon default of premiums is not a foreclosure requiring notice under provisions of policy relating to foreclosure on account of total indebtedness being equal to or in excess of total loan value. Erickson v. E., 193M269, 258NW736. See Dun. Dig. 4645a, 4816.

Under our standard life insurance policy, surrender charge authorized by law and provided for in policy is properly deductible from cash surrender value whether that value be sought by surrender of policy or applied automatically to purchase of term insurance upon default in premiums. Id. See Dun. Dig. 4816.

Upon default in premium, insured becomes tentatively indebted to insurer for new premium, which in case of loss is deducted from payment made under policy but, if loss does not occur and premium is not paid during grace period, default takes effect as of due date subject to insured's right during three-month period to choose one of other two options as a substitute for term insurance. Id. See Dun. Dig. 4816.

Standard provision that failure to repay any loan or to pay interest shall not avoid the policy unless total indebtedness equals or exceeds loan value, and until one month after notice, is not applicable, and does not require notice to insured of deduction from cash value of his indebtedness to insurer, where policy lapses for nonpayment of premium and automatic provisions for extended insurance or other options take effect. Palmer v. C., 193M306, 258NW732. See Dun. Dig. 4645a.

Under terms of policy, a surrender charge was properly deducted from cash surrender value. Id. See Dun. Dig. 4816.

3396. Mis-statement, when not to invalidate policy.

Soliciting agent for weekly payment life insurance policies is the agent of the insurer and not of the insured,

and the insurer is estopped by act of agent in writing answers incorrectly in application without the knowledge or fault of the insured. Enge v. J., 183M117, 236NW207. See Dun. Dig. 4662, 4681(89), 4717.

Where general manager of insurance company business writes down incorrect answers in application without knowledge of insured, he is agent of insurer and insured cannot be defeated by untrue answers. Smith v. B., 187M202, 244NW817. See Dun. Dig. 4688.

Whether insured or insurer's agent answered questions in application for life insurance, held for jury. Hafner v. P., 188M481, 247NW576. See Dun. Dig. 4662.

Section applies to a standard life insurance policy issued without medical examination, and in order to avoid policy misrepresentations in application must have been wilfully false and intentionally misleading. Id.

Signing without reading a life insurance application prepared by defendant's agent does not present a wilfully false or intentionally misleading misrepresentation. Id.

Policy of life insurance issued without a medical examination is not avoided because of false representations unless they are willfully false or intentionally misleading. Elness v. P., 190M169, 251NW183. See Dun. Dig. 4673.

Statements made in application as to prior illnesses, attendance of physicians, and as to health were not as a matter of law willfully false and intentionally misleading. Id. See Dun. Dig. 4673.

An insurance policy issued without medical examination is governed by this section. Schmidt v. P., 190M 239, 251NW683. See Dun. Dig. 4665.

Statute cannot be circumvented by insurer by insertion in policy of condition that policy shall not take effect if insured is not in sound health at date of issuance thereof. Id.

Evidence held insufficient to show conclusively that insured intentionally concealed fact that he had been engaged in business of bootlegging for purpose of deceiving or defrauding life insurer. Domico v. M., 191M 215, 253NW538. See Dun. Dig. 4670.

Failure of applicant for life insurance to disclose facts of which he is ignorant is not ground for forfeiture of policy. Id.

General questions in an application for insurance calling for information concerning former ailments do not require disclosure of ailments of a trivial, temporary or unimportant nature. Id.

Effect of misrepresentation in application due to negligence or fault of agent. 15MinnLawRev595.

3399. Forms.

Enge v. J., 183M117, 236NW207; note under §3396.

½. Construction of contract in general.

Rule of construing insurance contracts favorably to insured does not permit a result contrary to plain meaning of language. Koeberl v. E., 190M477, 252NW419. See Dun. Dig. 4659.

Except as restrained by insurance laws of state, parties to life insurance policy are free to contract, and resulting contract, insofar as language may have been selected by insurer, is to be construed most favorably to insured, but standard provisions required by statute are to be construed as other contracts. Palmer v. C., 193M306, 258NW 732. See Dun. Dig. 4659.

Rule that an insurance contract should be construed strictly against insurer does not apply where there is no ambiguity in provision under consideration. Opten v. P., 194M580, 261NW197. See Dun. Dig. 4659.

Necessity of insurable interest. 16MinnLawRev569.

¾. Death while committing crime.

Death of an insured while committing a felony is not a ground of exemption from liability, or for forfeiture of a life insurance policy in absence of a provision excepting such a risk, unless it appears that policy was obtained in contemplation of commission of a felony. Domico v. M., 191M215, 253NW538. See Dun. Dig. 4810.

1½. Interim insurance.

Application for insurance, being subject to the approval of the insurance company, held no more than an offer which was revoked by death of applicant prior to such approval, and in view of provisions of application, a conditional receipt given applicant by company's soliciting agent for initial premium was ineffective as to interim insurance. Braman v. M. (USCCA8), 73F(2d)391. See Dun. Dig. 4655.

2. Payment of premiums.

Applicant having died without paying the premium or receiving the policy, it never went into effect, there being nothing to show that conditions specified in application were waived. 177M273, 225NW81.

A cash payment of first premium at time of signing application for life insurance puts insurance in force as of date of application when applicant is subsequently found to be an accepted risk, though no declaration of payment is made in application or receipt for cash premium given. Fortin v. N., 185M523, 241NW673. See Dun. Dig. 4816.

Evidence of nonpayment of premium on life policy held sufficient. Schoonover v. P., 187M343, 245NW476. See Dun. Dig. 4816.

A valid contract of life and accident insurance was consummated where insured gave post dated check for first quarter premium and insurer, with knowledge of check, delivered policies to agent for delivery to insured, who was killed before delivery of policy to him. Martin v. B., 188M262, 246NW882. See Dun. Dig. 4654, 4770.

Portion of dividend not used as premium, held part of policy reserve and sufficient in amount to carry insurance beyond date of insured's death. Mickleson v. E., 190M28, 251NW1. See Dun. Dig. 4816.

Where loan on policy was never consummated, application for loan held not final election by insured that dividend should be applied otherwise than to purchase of extended insurance. Id.

Where a life insurance policy is issued at rates higher than standard, due to substandard risk, and thereafter insured is reclassified as a standard risk and premiums reduced to standard from time of reclassification, with policy "reissued at standard rates" and "rewritten" as of time of such reclassification, and where premium is readjusted as of that date, and refund according to such readjustment is accepted and readjustment acquiesced in by insured until his death over 3 years thereafter, there is a practical construction placed upon rewritten policy to effect that its provisions as to rates are not retroactive to inception of coverage, and uncontradicted evidence of an unimpeached witness as to fact of substandard classification and reclassification, and ensuing readjustment compels a finding that there was no overchage during coverage of substandard risk. Erickson v. E., 193M269, 258NW736. See Dun. Dig. 4816.

Parties to a contract of insurance may fix and definitely determine due date of all premium payments, absent statutory limitations in that regard. Juster v. J., 194M382, 260NW493. See Dun. Dig. 4816.

Date of life policy and not date of delivery governs due date of premiums. Id.

3. Permanent and total disability.

Loss of the use of both hands constituted "total" disability and entitled insured to income although still able to conduct a business for profit. 175M210, 220NW561.

Where a paragraph of contract provided that after disability has been continuous for three months, it shall be presumed to be permanent, and another paragraph that insurer might demand further proof of continuance of disability, court properly instructed that disability was presumed to be permanent after three months, where no demand was made for such further proof. 175M210, 220 NW561.

Words in disability policy must be construed according to their nature and character and their relation to subject matter. Maze v. E., 188M139, 246NW737. See Dun. Dig. 4659.

A totally disabled insured is "permanently" disabled when he has been totally disabled for a period of 60 days and proves by competent evidence, nature and character of such disability and that it may reasonably be expected to continue for life. Maze v. E., 188M139, 246NW737. See Dun. Dig 4871c.

"Totally disabled" in disability policy does not mean absolute helplessness but inability to do all substantial and material acts necessary to carrying on of insured's calling in substantially his customary and usual manner. Maze v. E., 188M139, 246NW737. See Dun. Dig. 4871c.

Insured, one arm amputated as result of accident, but still able to do much farm work—such as he is "able to do with one arm"—properly found not totally and permanently disabled from "performing any work for compensation of financial value." Koeberl v. E., 190M 477, 252NW419. See Dun. Dig. 4871C.

Statement of physician that insured was suffering from arteriosclerosis and chronic influenza of mid-vertex region of brain, a condition which, in his opinion, was permanent, without any statement as to what extent disability affected insured's ability to engage in any kind of gainful occupation, was not "due proof" of total and permanent disability to perform gainful work. Rishmiller v. P., 192M348, 256NW187. See Dun. Dig. 4871C.

Insured upon becoming totally and permanently disabled was not entitled to recover present value of future installments of disability benefits based on his expectancy but was confined to a suit upon contract for past due installments, notwithstanding insurer's refusal to make disability payments. Id. See Dun. Dig. 4871C.

In action to recover installment payments under policy providing for "benefits" in event of insured becoming totally and permanently disabled, words employed in insurance contract must be so construed as to make effective general insurance purpose. Bahneman v. P., 193 M26, 257NW514. See Dun. Dig. 4871c.

Where court found that insured was totally disabled over a period of eleven months and that this condition might reasonably be expected to continue for an indefinite period of time and that he might be permanently unable to engage in any occupation affording any kind of compensation of financial value during remainder of his lifetime, nature of his disability (pulmonary tuberculosis) being such that it was impossible to determine with absolute certainty that he would or would not recover, held, that action to recover such benefit payments lies notwithstanding that when action was brought, ailment causing disability was no longer totally disabling. Id.

Guardian of insane insured person who escaped from insane asylum and disappeared cannot continue to receive disability benefits upon a mere presumption of continuance of life and continuance of disability, but must show actual physical existence and continuing disa-

bility as required by policy. Opten v. P., 194M580, 261 NW197. See Dun. Dig. 4871c.

4. Double indemnity.

Where surgeon in preparation for removal of insured's tonsils administered novocaine, which because of her unknown bodily hypersusceptibility to this drug, caused her death, held that death was accidental under double indemnity clause. 176M171, 222NW912.

In action on life policy containing "double indemnity" provision, evidence held to warrant finding that death was accidental. Strommen v. P., 187M381, 245NW632. See Dun. Dig. 4871a.

Provision in life policy, that upon default it should be automatically extended without benefit of double indemnity, was valid. Johnson v. C., 187M611, 246NW354, Johnson v. R., 187M621, 246NW358. See Dun. Dig. 4816.

Where a man who had a stone in his kidney suffered a fall which dislodged kidney stone which then lodged in ureter and caused his death, it became a question for jury whether death was caused solely by external, violent, and purely accidental means and not directly or indirectly by bodily infirmity. Mair v. E., 193M565, 259 NW60. See Dun. Dig. 4873.

Evidence justified finding of jury that insured's death resulted from accidental means within meaning of double indemnity clause and was not suicide. Backstrom v. N., 194M67, 259NW681. See Dun. Dig. 4811.

5. Proof of loss.

Hearsay statements from others than the assured, received by aphysician conducting a post-mortem examination, are not competent evidence. Bullock v. N., 182M 192, 233NW858. See Dun. Dig. 3286.

The cross-examination of defendant's medical examiner as to contents of his report to the defendant held proper under the circumstances shown. Bullock v. N., 182M192, 233NW858. See Dun. Dig. 4809.

Evidence tending to show that the assured truthfully answered the questions of defendant's medical examiner is competent on the issue of whether false answers were made. Bullock v. N., 182M192, 233NW858. See Dun. Dig. 4664.

Use by life insurer of phrase "satisfactory proof" instead of "due proof" was not a repudiation of its contract to pay total permanent disability benefit upon "due proof." Rishmiller v. P., 192M348, 256NW187. See Dun. Dig. 4871C.

6½. Presumption of death.

Jury were justified in finding that evidence preponderated in favor of conclusion that insured came to his death at about time he disappeared and prior to date when policy sued upon expired. Sherman v. M., 191M607, 255NW113. See Dun. Dig. 4815.

Limitations in disappearance case commences to run from time when loss becomes due and payable, and not from time when loss occurs. Id. See Dun. Dig. 5605.

To give rise to presumption of death after seven year's unexplained absence, such absence must be from last usual place of abode or resort. White v. P., 193M263, 258NW519. See Dun. Dig. 3434, 4844.

Presumption of death from seven years' absence. 19 MinnLawRev777.

7. Rescission and release of liability.

Beneficiary in life policy who retained premiums when returned by insurer held to have rescinded. Peterson v. N., 185M208, 240NW659. See Dun. Dig. 4659a.

That after death of insured a suit in equity does not lie to rescind insurance contract does not prevent the parties from rescinding by consent. Peterson v. N., 185M 208, 240NW659.

Whether notice of due date or default in payment of life insurance premium was given as customary, held for trial court. Schoonover v. P., 187M343, 245NW476. See Dun. Dig. 4816.

7a. Paid-up policy.

Provisions of life policy permitting company on default to deduct indebtedness from surrender value and face of policy and extend policy for lesser amount, held not to impose any penalty or forfeiture. Schoonover v. P., 187M343, 245NW476. See Dun. Dig. 4816.

Automatic extension of life policy on default, held not foreclosure of loan or forfeiture of policy, and provision as to notice of intention to foreclose did not apply. Schoonover v. P., 187M343, 245NW476. See Dun. Dig. 4645a.

On default, life policy held to become automatically a paid-up term policy for such extended time as cash surrender value less existing indebtedness would purchase in a single premium. Schoonover v. P., 187M343, 245NW 476. See Dun. Dig. 4816.

Loan on life policy was not ordinary commercial or banking transaction so as to disconnect it from provisions as to extended insurance on failure to pay premiums. Schoonover v. P., 187M343, 245NW476. See Dun. Dig. 4645a.

7b. Change of beneficiary.

Change of beneficiary in life policy held to become effective upon receipt by insurance company of application therefor, and endorsement of change upon certificate, or policy was but formal or ministerial act. Brajovich v. M., 189M123, 248NW711. See Dun. Dig. 4813.

Equity will consider that done which should have been done by an insurer which received but lost application for change of beneficiary. Id.

The fact that insured was informed that insurer claimed it had not received requested change of beneficiary, which it in fact had received, and that insured failed to execute and forward a new request for such change, did not revoke or nullify change of beneficiary already effectively made. Id.

7c. Loans on policy.

Rights of irrevocable beneficiary in life policy, although vested, were subject to provision granting insured right to borrow from insurer. Stahel v. P., 189M405, 249NW 713. See Dun. Dig. 4645a, 4813.

So-called loans made by insurer to insured upon security of life insurance policies are in reality but advances to insured against reserve on policy, and do not create personal liability or a debt of insured which could be sued upon. Palmer v. C., 193M306, 258NW732. See Dun. Dig. 4645a.

Standard provision that failure to repay any loan or to pay interest shall not avoid the policy unless total indebtedness equals or exceeds loan value, and until one month after notice, is not applicable, and does not require notice to insured of deduction from cash value of his indebtedness to insurer, where policy lapses for nonpayment of premium and automatic provisions for extended insurance or other options take effect. Id.

Under terms of policy, a surrender charge was properly deducted from cash surrender value. Id. See Dun. Dig. 4816.

Deduction of loans from cash surrender value under terms of contract upon default of premiums is not a foreclosure requiring notice under provisions of policy relating to foreclosure on account of total indebtedness being equal to or in excess of total loan value. Erickson v. E., 193M269, 258NW736. See Dun. Dig. 4645a, 4816.

Loan from insurer made upon security of a life insurance policy under provisions of our standard form is not a commercial loan, and differs from such a loan, in that it does not in ordinary sense create a personal liability of insured and cannot be sued upon. Id. See Dun. Dig. 4645a.

7d. Forfeiture.

A life insurance policy is subject of a gift inter vivos, and transferable by delivery without written assignment. Redden v. P., 193M228, 258NW300. See Dun. Dig. 4029, 4693.

Complete and absolute surrender of all power and dominion over life insurance policy was clearly shown by delivery of key to receptacle containing policy, with intention of insured to part absolutely with all title to the policy. Id. See Dun. Dig. 4026, 4693.

Evidence sustains finding that father of plaintiff for value gave and assigned to plaintiff a life insurance policy issued by defendant to father. Id. See Dun. Dig. 4693.

Finding is sustained that life insurer had full knowledge of plaintiff's claim of assignment of life policy before a judgment in a suit on policy was rendered in a Wisconsin court against defendant and in favor of administratrix of insured's estate and before it paid such judgment. See Dun. Dig. 4693.

Where administratrix brought action in another state upon life insurance policy and, before rendition of judgment for plaintiff therein, insurer was sued in this state by one claiming to be assignee of policy, payment of judgment to administratrix was no defense to suit by assignee who was not a party in other suit. Id. See Dun. Dig. 4693, 4812, 5174.

7e. Reinstatement.

Beneficiary in life policy was not entitled to have it reinstated after it had lapsed for non-payment of premiums. Stahel v. P., 189M405, 249NW713. See Dun. Dig. 4814.

71. Options.

Where insured designated a specified option with respect to future dividends to be declared by insurer, and died without making any change in respect thereof, insurer had no right, in law or in equity, to apply such dividends to any other purpose that that selected. Elton v. N., 192M116, 255NW857. See Dun. Dig. 4808.

Under our standard life insurance policy, surrender charge authorized by law and provided for in policy is properly deductible from cash surrender value whether that value be sought by surrender of policy or applied automatically to purchase of term insurance upon default in premiums. Erickson v. E., 193M269, 258NW736. See Dun. Dig. 4816.

Upon default in premium, insured becomes tentatively indebted to insurer for new premium, which in case of loss is deducted from payment made under policy, but, if loss does not occur and premium is not paid during grace period, default takes effect as of due date subject to insured's right during three-month period to choose one of other two options as a substitute for term insurance. Id.

9. Waiver of right to forfeit.

Trial proceeded as if defendant had satisfactory proofs of death and that the amount of life policy was due and payable to some one. Redden v. P., 193M228, 258NW300. See Dun. Dig. 408, 4789.

Correspondence held not waiver of premium by insurer. Erickson v. E., 193M560, 258NW736. See Dun. Dig. 4676.

9½. Action on policy.

In action on life policy evidence held to justify directed verdict for defendant on ground that death was suicidal. New York L. I. Co. v. A. (CCA8), 66F(2d)705.

In action on life policy evidence held insufficient to show death by accident, and sufficient to support inference of suicide. Id.

In action on life policy, in which defense is suicide, plaintiff has burden of proving accidental death. Id.
In action on life policy, in which defense was suicide within the contestable period, it was error to instruct that plaintiff could recover the face of the policy if she failed to prove double indemnity based on death by accident. Id.
In action on old line life insurance policy, death of insured and proof of death admitted, production of policy by plaintiff makes a prima facie case. Topinka v. M., 189M75, 248NW660. See Dun. Dig. 4738.
Life insurance company's records of policy were admissible in evidence and their showing of nonpayment of renewal premium presumptively true. Id.
Payment of renewal premium necessary to have kept policy in force at time of death was element of plaintiff's case, and allegation of its lapse because of nonpayment not an affirmative defense. Id.
Burden of proof of payment of renewal premium rested upon plaintiff throughout, although burden of going forward with evidence was shifted to insurer by plaintiff's prima facie case. Id.
Wife as beneficiary in life policy was proper party plaintiff in action on policy though insured had failed to schedule policy as an asset or claim it as exempt in bankruptcy. Kassmir v. P., 191M340, 254NW446. See Dun. Dig. 4734.
Court properly submitted to jury determination of whether plaintiff had complied with defendant's requirements respecting furnishing of proof of disability. Id. See Dun. Dig. 4740, 4875.
Evidence justified trial court in submitting to jury doctrines of waiver and estoppel as to failure to give timely notice of disability and furnishing proof thereof. Id. See Dun. Dig. 4686a, 4740, 4789.
Whether insured became totally and permanently disabled while policy was in force was a fact issue properly submitted to jury, though neither notice of disability nor proof thereof was furnished until after death of the insured. Id. See Dun. Dig. 4740, 4871c.
Trial court properly awarded interest upon plaintiff's claim from date when proofs of death were lodged with insurer. Sherman v. M., 191M607, 255NW113. See Dun. Dig. 4817, 4881.

10. Action to cancel.

Finding against suicide cannot be reversed unless the evidence precludes every reasonable hypothesis of natural or accidental death. 172M98, 214NW795.
Action to cancel for fraud does not lie where insured died before his policy became incontestable, there being an adequate remedy at law as a defense. 174M498, 219 NW759.

11. War risk insurance.

Installments of war risk insurance unpaid at death of beneficiary passed to heirs of insured, and did not go to estate of beneficiary, who was residuary legatee in insured's will. Sponberg v. L., 187M650, 247NW679.
Commuted value of War Risk Insurance becomes part of estate of deceased soldier for purposes of distribution as of date of his death, where designated beneficiary either does not survive insured or survives him and dies before receiving all installments which otherwise would have been payable to him. Hallbom, 189M383, 249NW417, aff'd. 191US473, 54SCR497.
War Risk Insurance becoming part of estate of an intestate, is to be distributed according to applicable laws of descent, subject to claims of creditors. Id.
An insured in a war risk insurance policy may dispose of the unpaid instalments by will, and they must be distributed according to his will. Leonard, 191M388, 254NW594. See Dun. Dig. 10205.
A widow of a deceased soldier who was guilty of open and notorious illicit cohabitation with another, may not take any part of war risk insurance fund as a distributee from her deceased husband's estate, upon distribution after the "present value" of the unpaid installments of such insurance is paid to estate of deceased soldier, after death of named beneficiary. Bergstrom's Estate, 194M97, 259NW548. See Dun. Dig. 4812.

3400. Exceptions.

A single premium policy containing a 3½% maximum cash surrender charge is not in violation of law and may be approved by insurance commissioner. Op. Atty. Gen. (254A), June 24, 1935.

3402. Provisions which must be included.

174M498, 219NW759; note under §3399.
A clause in a life policy that the contract shall be incontestable after one year from its date of issue unless insured dies in such year, in which event it shall be incontestable after two years, held valid under this section. Mutual Life Ins. Co. v. Conley, (DC-Minn), 55F (2d)421.
At death all rights under a life policy become fixed, and if insured dies during the period of contestability insurer may set up its defenses, though the suit is actually brought after the period of contestability has expired. Mutual Life Ins. Co. v. Conley, (DC-Minn), 55F(2d)421.
This, however, is not the rule in the federal courts. Id.
Provision in life policy, that upon default it should be automatically extended without benefit of double indemnity, was valid. Johnson v. C., 187M611, 246NW354; Johnson v. R., 187M621, 246NW358. See Dun. Dig. 4816.
Portion of dividend not used as premium, held part of policy reserve and sufficient in amount to carry insurance beyond date of insured's death. Mickleson v. E., 190M28, 251NW1. See Dun. Dig. 4816.
Where loan on policy was never consummated, application for loan held not final election by insured that dividend should be applied otherwise than to purchase of extended insurance. Id.
Standard provision that failure to repay any loan or to pay interest shall not avoid the policy unless total indebtedness equals or exceeds loan value, and until one month after notice, is not applicable, and does not require notice to insured of deduction from cash value of his indebtedness to insurer, where policy lapses for nonpayment of premium and automatic provisions for extended insurance or other options take effect. Palmer v. C., 193M306, 258NW732. See Dun. Dig. 4645a.
Under terms of policy, a surrender charge was properly deducted from cash surrender value. Id. See Dun. Dig. 4816.

(3).

Joyce v. N., 190M66, 252NW427; note under §3417.

(8).

Deduction of loans from cash surrender value under terms of contract upon default of premiums is not a foreclosure requiring notice under provisions of policy relating to foreclosure on account of total indebtedness being equal to or in excess of total loan value. Erickson v. E., 193M269, 258NW736. See Dun. Dig. 4645a, 4816.
Under our standard life insurance policy, surrender charge authorized by law and provided for in policy is properly deductible from cash surrender value whether that value be sought by surrender of policy or applied automatically to purchase of term insurance upon default in premiums. Id. See Dun. Dig. 4816.
Upon default in premium, insured becomes tentatively indebted to insurer for new premium, which in case of loss is deducted from payment made under policy, but, if loss does not occur and premium is not paid during grace period, default takes effect as of due date subject to insured's right during three-month period to choose one of other two options as a substitute for term insurance. Id. See Dun. Dig. 4816.

3406. Provisions which no policy may include.

Mickleson v. E., 190M28, 251NW1; note under §3402.

3412. Life policies to contain entire contract.

Enge v. J., 183M117, 236NW207; note under §3370.
An application for a life insurance policy was an offer to the company, and acceptance by the company created a contract. Lueck c. N., 185M184, 240NW363. See Dun. Dig. 4646a, 4655.

ACCIDENT AND HEALTH INSURANCE

3415. Form of policy to be approved, etc.

Joyce v. N., 190M66, 252NW427; note under §3417.
A motor speed boat used in making regular pleasure excursions around a large lake, held a "public conveyance provided by a common carrier, for passenger service only," within the coverage of an accident insurance policy. Cummings v. G., 183M112, 235NW617. See Dun. Dig. 4872(91).
Sections 3415-3427 apply to a life insurance contract which also contains a contract for disability insurance, and such policy should be construed in regard to disability insurance as if clauses required by those sections were a part of policy. Joyce v. N., 190M66, 250NW674. See Dun. Dig. 4869b, 4872.

3417. Standard provisions.

1. In general.

In case of incurable disability half of indemnity could not be paid until death. 32F(2d)61.
Burden was upon plaintiff to show both external violence and accidental means, but policy held not to require eyewitnesses nor to deprive plaintiff of benefit of presumption against self destruction. 173M191, 217NW 123.
Where surgeon in preparation for removal of insured's tonsils administered novocaine, which, because of her unknown bodily hypersusceptibility to this drug, caused her death, held that death was accidental under double indemnity clause. 176M171, 222NW912.
By assuming and conducting defense of main action both for owner of car and driver, with knowledge of all the facts and without any notice that it would not be liable for any judgment against the driver, ensurer was estopped to thereafter deny liability. 181M437, 232NW 790. See Dun. Dig. 4875d.
Where an automobile accident insurance policy provides that the insurance is made available to any person operating car with permission of assured, fact that one uses car for a purpose other than that for which he asked to use it does not release insurer from liability. 181M437, 232NW790. See Dun. Dig. 4875c.
The evidence held sufficient to support verdict necessarily based upon a finding of "accidental drowning at a bathing beach where a life guard is regularly stationed," for language of coverage of accident life insurance policy must be construed in favor of the assured rather than in favor of the insurer. Lohstreter v. F., 182M298, 234NW 299. See Dun. Dig. 4872(66).

Whether plaintiff's ailment was one for which the defendant assumed no liability under the policy was a fact issue for the jury. 182M434, 234NW645. See Dun. Dig. 4872.

In action to recover on a health insurance policy, defendant's claim that it had made a settlement with, and secured a release from, plaintiff, was properly determined adversely to the defendant. Cooper v. P., 182M434, 234 NW645. See Dun. Dig. 4875a.

If complaint against insured under automobile liability policy states a cause of action covered by the policy, insurer is obligated to defend, although other causes not covered by the policy are included. Christian v. R., 185 M180, 240NW365. See Dun. Dig. 4875d.

Accident policy will be construed strictly against insurer. Ackermann v. M., 184M522, 239NW229. See Dun. Dig. 4872(66).

Evidence held to show that insured died from heart disease, and not as a result of accident. Ackermann v. M., 184M522, 239NW229. See Dun. Dig. 4871a.

Provision requiring immediate notice means reasonable notice, and notice by beneficiary on discovering the policy two weeks after death, held sufficient. Clay v. Aetna Life Ins. Co., (DC-Minn), 53F(2d)689. See Dun. Dig. 4869b, 4874c.

Accident insurer, held entitled to autopsy, and to disinterment of body of insured to determine cause of death, that right being given by the policy, and not being contrary to the public policy of Minnesota; and demand therefor was properly made on widow as beneficiary, and such demand was seasonably made February 25 where death occurred January 22 and notice of claim was received February 7. Id.

Refusal of widow to consent to autopsy held to defeat her right to recover on the policy. Id.

Where death ensues as unusual, unexpected, or unforeseen result of an intentional act, it occurs by accidental means even if there is no proof of mishap, mischance, slip, or any occurrence out of ordinary. Konschak v. E., 186M423, 243NW691. See Dun. Dig. 4871a.

Sunstroke, suffered by a person engaged in his usual occupation and activity, is an injury caused through external, violent and accidental means. Tate v. B., 186 M538, 243NW694. See Dun. Dig. 4871a.

Provisions of an accident insurance policy must be given a reasonable and practical construction, not inconsistent with clear language therein used. Wilson v. M., 187M462, 245NW826. See Dun. Dig. 4659, 4872.

An injured person may be held to be totally disabled under accident policy if he is unable to perform substantial and material parts of some gainful work or occupation with substantial continuity. Wilson v. M., 187M 462, 245NW826. See Dun. Dig. 4871c.

In construction, court may take into consideration situation existing at time accident policy was issued, capabilities and occupation of insured, and risk intended to be covered. Wilson v. M., 187M462, 245NW826. See Dun. Dig. 4872.

Accident policy held to impose liability for injury received while operating hand plow. Pankonin v. F., 187 M479, 246NW14. See Dun. Dig. 4872.

Policy of accident insurance is to be construed in favor of insured. Johnson v. F., 190M580, 252NW666. See Dun. Dig. 4872.

Insured in accident policy lost "entire sight of one eye" where white spot developed upon pupil, though insured could tell light from dark and could see slightly to one side. Jensvold v. P., 191M122, 253NW535. See Dun. Dig. 4872.

One tightening oil plug under an automobile was "adjusting" an automobile within meaning of accident policy. Id. See Dun. Dig. 4873b.

Provision in health and accident policy requiring that insured be wholly and continuously disabled from performing any duty pertaining to his occupation, held to have reference to sickness and disability benefits and not to benefit payment for permanent loss of sight of an eye within 90 days after accident. Jensvold v. M., 192M475, 257NW86. See Dun. Dig. 4871C.

Verdict for temporary total disability benefits under accident policy not sustained by evidence because the insured, who immediately returned to his work and performed, and for long continued to perform, an important part of his duties, was able to do so with due regard for his health. Kerkela v. B., 194M318, 260NW 300. See Dun. Dig. 4871c.

Motorcycles as "motor driven cars" within terms of accident insurance policy. 15MinnLawRev354.

Meaning of total disability within terms of accident insurance policy. 16MinnLawRev211.

Right of insurer to demand an autopsy. 16MinnLaw Rev713.

Death from injuries inflicted by third persons as constituting death by accidental means. 17MinnLawRev95.

1½. Accident and disability clauses in life policies.

Life insurer held entitled to sue in equity in a federal court to cancel total and permanent disability endorsements on policy on ground of fraud, as against contention that plaintiff had an adequate remedy at law. Penn Mut. L. I. Co. v. J. (DC-Minn), 5FSupp1003. See Dun. Dig. 4659a.

A life insurance policy which contains a supplemental contract of disability or accident insurance which is not within exceptions provided for in subd. 2, §3426, is in its disability or accident provisions subject to health and accident code and disability benefits (other than death benefits) must be payable to the insured. Joyce v. N., 190M66, 252NW427.

4b. Notice of claim.

Evidence held to justify finding that plaintiff notified insurer of his disability as soon as was reasonably possible. Joyce v. N., 190M66, 250NW674. See Dun. Dig. 4874c.

Where insured in accident policy was injured Oct. 18, died on Oct. 20, unmarried and without relatives in vicinity, notice of death given on November 10 by special administratrix appointed on November 6th could be found to be "immediate notice" and given "as soon as was reasonably possible." Sleeter v. P., 191M108, 253NW531. See Dun. Dig. 4874c.

Where accident policy required notice of injuries suffered as well as notice of accident, time did not begin to run in which to give such notice until insured had reasonable grounds for believing that bodily injury complained of would result from accident. Jensvold v. M., 193M475, 257NW86. See Dun. Dig. 4874C.

Whether mutual accident association waived notice of accident held for jury. Id.

Notice of injury given within 20 days after plaintiff knew that he had lost or would lose sight of his eye was a sufficient compliance with accident policy provision requiring notice within 20 days after the date of the accident. Jensvold v. P., 191M122, 253NW535. See Dun. Dig. 4874c.

5. Time for suit.

Action on accident policy was barred after two years from accrual of cause of action, where the policy incorporated subd. (14) of this section in its provisions. 174M354, 219NW286.

6. Evidence.

The insured will be presumed to have accidentally discharged pistol which killed him unless there be evidence which overcomes the presumption. 173M191, 217NW123.

Burden of proof is on beneficiary to show that death resulted from accidental means within insurance policy. Ackermann v. M., 184M522, 239NW229. See Dun. Dig. 4875(26).

Under accident policy, burden was on plaintiff to prove death by bronchial pneumonia was due to injury and that no disease or infirmity of body cooperated or contributed thereto. Milliren v. F., 185M614, 242NW290. See Dun. Dig. 4873.

Evidence held sufficient to show that death from bronchial pneumonia was caused by accident, and not disease, in action on accident policy. Milliren v. F., 185M614, 242 NW290.

Where death occurs by external violence, and there is no evidence whatever as to means of such violence, burden of proof upon beneficiary in an accident insurance policy is sufficiently supported by presumption that violence was due to accidental means. Konshak v. E., 186 M423, 243NW691. See Dun. Dig. 4871a.

Finding that death of meat cutter by shooting was not due to accidental injury, sustained. Anderson v. M., 187 M226, 244NW816. See Dun. Dig. 4871a.

Burden of proving that death was occasioned by external, violent, and accidental means and was within terms and conditions of accident policy was upon plaintiff. Sleeter v. P., 191M108, 253NW531. See Dun. Dig. 4738, 4871a.

7. Questions for jury.

Evidence that insured's death in garage was result of external, violent, and accidental means was sufficient to go to jury. Palmer v. O., 187M272, 245NW146. See Dun. Dig. 4871a.

Whether injury to foot totally disabled railroad brakeman within accident policy, held for jury. Wilson v. M., 187M343, 245NW826. See Dun. Dig. 4871c.

Whether insured in accident policy was operating plow while attempting to adjust horse collar preparatory to hitching horses to plow, held for jury. Pankonin v. F., 187M479, 246NW14. See Dun. Dig. 4871a.

Whether insured automobile driver who had stopped to aid motorist on opposite side of highway and had returned and was reaching in car to turn on ignition switch when his car was hit by another car and he was killed, suffered loss of life by wrecking of car in which he was riding, held for jury. Johnson v. F., 190 M580, 252NW666. See Dun. Dig. 4872.

In action on accident policy whether loss of sight of eye was caused by septic infection or by accident, held question of fact for jury. Jensvold v. M., 193M475, 257 NW86. See Dun. Dig. 4740.

7½. Instructions.

Charge as to what constitutes total disability under accident policy, held correct as applied to facts. Wilson v. M., 187M462, 245NW826. See Dun. Dig. 4871c.

8. Payment of premium.

Right to accumulation benefit was lost, though insurer accepted overdue premiums. 173M547, 218NW104.

Facts held to show that there was an acceptance of a premium so as to reinstate policy, and that insurer is estopped from claiming to contrary. Garber v. E., 193M 18, 257NW507. See Dun. Dig. 4684.

3418. Provisions forbidden—Optional features.

Where there was a cancellation by the insurer "without prejudice to any claim originating" prior to the cancellation, insured in health policy could not recover for

disability beginning after the cancellation, though sickness occurred prior to the cancellation. 172M19, 214NW 468.

3420. False statements.
Materiality of false statement held for jury. Jensvold v. M., 192M475, 257NW86. See Dun. Dig. 4666, 4871.

3423. Policy issued in violation of act.
A life insurance policy which contains a supplemental contract of disability or accident insurance which is not within exceptions provided for in subd. 2, §3426, is in its disability or accident provisions subject to health and accident code and disability benefits (other than death benefits) must be payable to the insured. Joyce v. N., 190M66, 252NW427. See Dun. Dig. 4869a.

3426. Not to affect workmen's compensation insurance.— * * * *

(2) Nothing in this act contained shall apply to life insurance, endowment or annuity contracts, nor to any such contracts or contracts supplemental thereto containing or providing for additional benefits of any kind in the event of death by accidental means or of the total and permanent disability of the insured as defined by the contract. ('13, c. 156, §12; G. S. '13, §3533; Mar. 29, 1935, c. 74, §1.)

(2).
Disability or accident provisions within life insurance policy are subject to accident code, unless excepted under this subdivision. Joyce v. N., 190M66, 252NW427. See Dun. Dig. 4869a.

CO-OPERATIVE LIFE AND CASUALTY COMPANIES

3429. Qualifications for license—number of members.—No corporation not now authorized to transact business in this state, shall be licensed to transact the business of life or casualty insurance, or both, upon the co-operative or assessment plant until at least three hundred (300) persons eligible to membership therein have made individual applications in writing therefor; containing warranties of age, health and other required conditions of membership, and shall have on deposit with the commissioner of insurance of this state as security for all its policyholders stocks or bonds, of this state or of the United States or bonds of any of the municipalities of this state, or personal obligations secured by first mortgage on real estate within this state, worth, exclusive of buildings, the amount of the lien, and bearing interest of not less than three per cent per annum, to an amount the actual market value of which exclusive of interest shall never be less than ten thousand dollars, provided that any such corporation which has heretofore procured and filed with the Commissioner of Insurance a part of the total number of applications required by law shall only be required to deposit securities of the market value of $5,000.00, provided, however, such a corporation that confines its membership exclusively to the members of volunteer fire departments shall be required to have not less than one hundred (100) individual applications in writing from persons eligible to membership and the sum of at least one thousand dollars ($1,000), which amount shall be liable only for death or indemnity claims made under its policy or membership certificate contracts. ('07, c. 318, §2; G. S. '13, §3503; '27, c. 238; Apr. 21, 1931, c. 287.)

3435. Net rates—reserve fund—limitation of expenses—etc.—No corporation hereafter organized to transact the business of life insurance upon the co-operative or assessment plan, and no such corporation not already admitted to transact business in this state shall hereafter be licensed to transact such life insurance business in this state unless it shall by its charter, by-law and policy or cretificate contracts, provide for and actually charge and collect from its members, for and on account of the insurance furnished to them, net rates which are at least equal to the rates known as the National Fraternal Congress rates, with 4 per cent interest.

Provided that when any such corporation has adopted the use of a net rate not less than the National Fraternal Congress table of mortality and interest at the rate of 4 per cent, on the full preliminary term plan, and shall set aside the said net premium to its mortuary or benefit funds, including reserve or special benefits, for the use and benefit of its members, such corporation shall on all premiums or assessments collected from and after January 1, 1927, be exempt from the provisions of Section 5, Chapter 318, General Laws of 1907, as amended by Chapter 377, General Laws of 1913, and Section 1, Chapter 211, General Laws of 1911, as amended by Section 1, Chapter 365, General Laws of 1915; but it shall keep on deposit, for the use and benefit of all its policyholders, an amount equal to the value of its individual policies as shown by its annual statement each year, with the Commissioner of Insurance of the State of Minnesota, until the same shall amount to the sum of $25,000.00.

Provided further that the accretions to the various funds derived from interest, rents, or other sources, less expense incidental to investment supervision, shall also be set aside and appropriated to the fund producing said accretions. Gain from lapses, savings in mortality, surrenders and changes shall revert to the expense fund.

Provided further that policies issued by such corporation may contain a provision that in event of default in premium payments, after premiums shall have been paid for three years, shall secure to the owner of the policy a stipulated form of insurance, the net value of which shall be at least equal to the reserve at the date of default on the policy and on any dividend addition thereto, specifying the mortality table and the rate of interest adopted for computing such reserve, less a sum not more than two and one-half per cent of the amount insured by the policy, and of any existing dividend additions thereto, and less any existing indebtedness to the company on the policy; and that the policy may be surrendered to the company at its home office within one month from date of default for a specified cash value at least equal to the sum which would otherwise be available for the purchase of insurance as aforesaid and shall stipulate that the company may defer payment for not more than six months after the application therefor is made. This provision shall not be required in term insurance of 20 years or less.

Provided further that such corporation shall value its policies at the end of each calendar year and show in its annual statement as a reserve liability the amount of such valuation. If Infantile Insurance is written it may be valued on the table known as Craig's extension below age ten. ('07, c. 318, §7; G. S. '13, §3508; '27, c. 41; Apr. 13, 1933, c. 216.)

3438. Exemption from taxation.
Two per cent gross premium tax is not applicable to assessment benefit association operating under §3445-1, et seq. Op. Atty. Gen. (249a-18), May 31, 1934.

ASSESSMENT BENEFIT ASSOCIATIONS

3445-1. Assessment benefit association authorized.—Any three or more persons, who are citizens of this State, desiring to form an assessment benefit association under this Act shall submit to the Commissioner of Insurance, in writing, proposed articles of association. Such articles shall state the name of the association, the location of its principal business office, which office must be located in this State, the time and place of holding meetings of the association and the manner of voting at such meetings and the number of members required to constitute a quorum, the name and residence of the persons so desiring to form such association, the number of its directors, and the names and addresses of the directors selected to serve until the first annual meeting of such association, the object of such association with its plan of doing business clearly and fully defined, the maximum amount of benefits it is intended to pay, which may be graduated according to the age of the insured

at the time of his admission to membership. (Act Apr. 13, 1933, c. 241, §1.)

An association for farmers organized for purpose of burying deceased members without profit must be organized according to provisions of this act. Op. Atty. Gen., Jan. 31, 1934.

This act authorizes incorporation for purposes of engaging in business of life insurance upon the assessment plan. Op. Atty. Gen. (249a-18), May 31, 1934.

Two per cent gross premium tax is not applicable to assessment benefit associations operating under this act. Op. Atty. Gen. (249a-18), May 31, 1934.

Words "first annual meeting" construed as to an association engaged in business prior to passage of act, means first annual meeting after issuance of license by commissioner of insurance. Op. Atty. Gen. (249a-2), July 19, 1934.

Articles of incorporation for formation of social and charitable corporations which would authorize company to transact business of death and disability benefit payments upon assessment plant may not be filed with the secretary of state, but such corporation must comply with insurance laws. Op. Atty. Gen. (92a-1), May 11, 1935.

3445-2. Commissioner of insurance may issue permit to solicit applications.—On receipt of such articles of association the Commissioner of Insurance shall examine the same and if he shall find that the objects and purposes are fully and definitely set forth and are within the provisions of this Act and that the name and title is not the same or does not so closely resemble a name or title in use as to have a tendency to mislead the public, shall approve the same, and upon deposit with him as such Commissioner, of the sum of $1,000.00 in cash, or in bonds of the character required for deposit by life insurance companies, to secure the performance by said persons and by the proposed corporation of their obligations, shall issue a permit to such persons to solicit applications for membership in such proposed association. (Act Apr. 13, 1933, c. 241, §2.)

3445-3. Membership fees—bond.—Upon the issuance of such permit the persons proposing such articles of association may solicit applications for membership in such proposed association and collect a membership fee of not more than $5.00 nor less than $3.00 with each such application, which membership fee shall be deposited in a bank approved by the Commissioner of Insurance in the names of such persons as trustees, or in lieu of such deposit, the Commissioner of Insurance may require a bond in the sum of $5,000.00 executed by some surety corporation authorized to transact surety business in this state to secure the return of said membership fees if the proposed association shall be abandoned.

Upon submission to the Commissioner of Insurance of not less than 300 bona fide applications for membership, and a certificate from such bank that an amount equal to at least the total membership fees charged on account of such applications has been deposited as herein provided, he shall mark said articles of association "filed" and thereupon a duplicate or certified copy of said articles of association shall be recorded in the office of the Register of Deeds of the County in which the principal office of such association is located, and upon proof thereof filed with the Commissioner of Insurance he shall issue a certificate of authority to said association to do business, and thereupon the said association shall be deemed a corporation and the persons whose applications for membership were so received shall be deemed members thereof. Thereupon, the membership fees collected and held by such persons as trustees and all other moneys in the hands of such persons shall be transferred to the treasurer of such association, but said deposit with the Commissioner of Insurance shall remain, but the persons who made such deposit may be reimbursed by said association therefor; provided, however, that if within 1 year from the filing of such proposed articles of association the organization of such association abandonment be not completed, the amount of the membership fees so collected shall be returned to the applicants without any deduction for expense, and upon proof thereof, the Commissioner of Insurance shall return the amount deposited with him, and the organization of the proposed association shall thereupon be deemed abandoned. (Act Apr. 13, 1933, c. 241, §3.)

3445-4. Articles may be amended.—The articles of association may be amended by authority of a majority vote of the members present and voting in person or by proxy, at any annual meeting of the association or at a special meeting called for that purpose. Provided, however, that any proposed amendment shall, before it becomes effective, be approved by the Commissioner of Insurance. (Act Apr. 13, 1933, c. 241, §4.)

3445-5. Shall adopt by-laws.—An assessment benefit association organized under the provisions of this Act shall make by-laws in the manner provided by the articles of association and may amend the same in the manner provided by the articles of association or by-laws of the association. A copy of such by-laws and of all amendment thereof, as amendments may be made, together with the certificate of the president and secretary, attested by the seal of the association, to the effect that such by-laws and amendments thereto were regularly adopted, shall be filed with the Commissioner of Insurance and shall be approved by him before the same shall become effective. (Act Apr. 13, 1933, c. 241, §5.)

3445-6. Board of directors.—The affairs of such assessment benefit association shall be managed by a board of not less than 3 nor more than 7 directors who shall be residents of the State of Minnesota, and who shall be elected from and by the members at such time and place and for such period not exceeding 3 years, as may be provided in the articles of association or the by-laws. Provided, that as near as practicable an equal number shall be elected each year. Whenever any directors shall be elected a certificate by the president and secretary, under the seal of the association, giving the names and residence of those elected and the terms of their offices shall be filed in the office of the Commissioner of Insurance. Vacancies on the Board of Directors shall be filed in the manner provided in the by-laws. (Act Apr. 13, 1933, c. 241, §6.)

3445-7. Officers.—Each such association shall have a president, treasurer and secretary and such other officers as the articles of association or by-laws shall provide. Each such officer shall give bond to the association for the faithful performance of his duties and accounting or the funds of the association coming into his hands, in such amount and with such responsible sureties as shall be prescribed by the Board of Directors but not less than $500.00 each. (Act Apr. 13, 1933, c. 241, §7.)

3445-8. Certificates of membership.—Such assessment benefit associations shall issue to each member a certificate of membership, which certificate shall provide for a death benefit payable to a designated beneficiary or to the member's estate, which certificate before it shall be used shall be approved as to form by the Commissioner of Insurance. Such certificate shall specify the maximum benefits which the association promises to pay upon contingency of death and shall state that the amount to be paid is dependent on payment of assessments by members, and upon the occurrence of such contingency the association shall be obligated to the beneficiary, to make payment as specified in the certificate not later than three months after the date due proof of death shall have been received by the association. Such certificate, together with the articles of association and the by-laws of the association, shall constitute and be the entire contract between the member and the association. Provided, in no case, shall the association be liable on any one certificate for an amount greater than the amount received on an assessment of $1.00 per member of its members, or of the members of

the same class or group in good standing, and such association may by its articles of association or by-laws provide for the levy of losses of one assessment of $1.00 each month and may then provide that its liability shall not in any one year exceed $12.00 per member in good standing of its members or of the members of the class or group thereof to which an insured member belongs, and such association may also provide for its articles of association that any excess of money raised by assessment above the amount required to pay losses may, if the article of association so provide, be accumulated in a reserve account and invested in the same class of securities as required by the statutes of this state for the investment of funds of domestic life insurance companies. (Act Apr. 13, 1933, c. 241, §8.)

Benefit association cannot legally grant cash withdrawal privilege. Op. Atty. Gen., Aug. 21, 1933.

3445-9. May be declared insolvent to non-payment of losses.—If the amount for which the association is liable remains unpaid after 6 months from the date upon which satisfactory proofs of death are filed with the association, and such claim is not rejected or contested by the association for fraud, misrepresentation or misstatement upon the part of the member or representative of the member, such association may be deemed insolvent and may be proceeded against as such by the Commissioner of Insurance. (Act Apr. 13, 1933, c. 241, §9.)

3445-10. Assessments.—Whenever the association shall have been notified of any loss under its certificate of membership, which exceeds in amount the benefit fund of the association properly allocated to the class to which the member belonged, the association shall levy an assessment to pay such loss. Provided that such association may by its articles of association or by-laws provide that at the end of every calendar month during which losses have occurred and due proof thereof filed with the secretary of the association, the association shall levy one or more assessments to pay such losses. Assessments provided for in this section shall be distributed equally as against the members of the association of the same class or group. The association may provide that of any assessment provided for in this section a certain percentage may be used to pay expenses of management or may provide for the levy of assessments for such purpose, and may also if the articles of association so provide levy assessments for the accumulation of a properly authorized reserve account at any time; provided, however, that the amount available for expenses of management, including salaries shall not be in excess of $6.00 per member per annum. All assessments provided for by this section shall be reported to the Board of Directors and a record thereof made upon the minutes of its meetings and such record shall show the amounts assessed for losses and expenses separately. (Act Apr. 13, 1933, c. 241, §10.)

3445-11. May divide membership into groups.—Any association heretofore or hereafter formed under this Act may divide its membership into as many classes or groups as such association may desire. Whenever such association shall divide its membership into classes or groups then such association so classifying its membership may assess each class or group separately, distributing such assessment equally as against all the members in the class or group to which the deceased member belonged. (Act Apr. 13, 1933, c. 241, §11.)

3445-12. Secretary to notify members of assessment.—It shall be the duty of the secretary, whenever such assessment shall have been levied, to immediately notify every member of such association, or in case such assessment is distributed against any certain class or group as provided in this Act, then every member belonging to the class or group against which such assessment is made or apportioned by mail, properly addressed to each member at the last post office address given by him to the secretary of the association, of the amount of the total assessment for losses and expenses, and the sum due from such member, as his share of such losses and expenses. Such notices shall also state the time when, and the name and address of the officer of the association to which the payment is to be made, but such time may not be less than 30 days nor more than 60 days from the date of such notice. Such notice, in case of a benefit assessment, shall include the name and address of the deceased member with the maximum amount to be paid.

Upon failure of any member to pay any assessment levied upon him under the provisions of this Act, within the time named in such notice, the association may declare the certificate of such member cancelled, upon a further notice sent by first class mail in the manner above provided that his certificate will be cancelled if payment is not made to the association within 10 days of the mailing of such cancellation notice. The association may reinstate a cancelled certificate of any member according to regulations provided in the by-laws of such association. (Act Apr. 13, 1933, c. 241, §12.)

3445-13. Membership fees.—The directors may fix the membership fee to be charged applicants for membership, within the same limits as provided in Section 3. All or any portion of the amount of the membership fees authorized by this Act may be paid to any person or persons soliciting the applicant to become a member as provided by the directors of the association. (Act Apr. 13, 1933, c. 241, §13.)

3445-14. Funds to be kept in two accounts.—Every assessment benefit association shall establish two general accounts to be known respectively as the Benefit Account and the Expense Account and may provide in its articles of association for a reserve account. Into the Benefit Account shall be placed the amount of all assessments or portions thereof collected from members of the association for the purpose of paying losses incurred under its certificates of membership, and from such account shall be paid losses incurred under its certificates of membership. Into the Expense Account shall be placed the membership fee received by the association and not retained by agents according to the by-laws, and all assessments or portions of assessments collected from members for the purpose of defraying the expenses of the association and from such account shall be paid all salaries, expenses, fees, taxes, costs of defending or prosecuting suits and all other items relating to the management of the association. Into the Reserve Account, if one is created, shall be placed moneys as provided in its articles of association. The funds to the credit of said account may be used to pay losses as the articles of association may provide. No sums shall ever be transferred from the Benefit Account or the Reserve Account to the Expense Account. (Act Apr. 13, 1933, c. 241, §14.

3445-15. Only one certificate to member.—No assessment benefit association shall issue to any member more than one certificate in any one group or class. No such association may after the certificate has been in force 1 year during the life time of the member avail itself of any defense to any claim for any benefit under its certificate of membership on account of any statement or answer to interrogatory by the member in his application for membership, except in case of fraud. (Act Apr. 13, 1933, c. 241, §15.)

3445-16. May transfer risks.—Any association organized, reincorporated or operating under the provisions of this Act may by majority vote of its Board of Directors at any regular meeting or any special meeting called for that purpose and of its members present and voting in person or by proxy at any

regular meeting or special meeting called for that purpose transfer its risks to, or reinsure them in any other assessment benefit association or any other Life Insurance corporation, fraternal beneficiary association or society, or merge or consolidate with any other assessment benefit association or any other Life Insurance corporation, fraternal beneficiary association or society, with the approval of the Commissioner of Insurance. (Act Apr. 13, 1933, c. 241, §16.)

3445-17. Powers of Commissioner of insurance.—The Commissioner of Insurance shall have the same power and authority over all associations to which this Act is applicable as to visitation and examination as are given to him by the statutes of this State over life insurance companies. (Act Apr. 13, 1933, c. 241, §17.)

3445-18. Members may make change in beneficiary.—Any member in any such association shall have the right at any time to make a change in the payee or beneficiary without obtaining the consent of such payee or beneficiary. (Act Apr. 13, 1933, c. 241, §18.)

3445-19. Funds exempt from process.—The money or benefit provided or paid by any association authorized to do business under this Act, as provided in the certificate of membership thereof, shall not be liable to any legal process to enforce payment of any debt or liability of a certificate holder, or of any beneficiary named therein. (Act Apr. 13, 1933, c. 241, §19.)

3445-20. Fees of commissioner.—The fees for any service or act of the Commissioner of Insurance or his assistants and employees, shall be the same as provided in the case of life insurance companies, except that each association authorized to transact business under this Act shall pay to the Commissioner of Insurance on submitting its proposed articles of association $5.00, and on the filing of its application and articles of association $20.00, and for each annual statement thereafter $5.00. (Act Apr. 13, 1933, c. 241, §20.)

3445-21. Must file reports with commissioner.—Every such association doing business under this Act, shall, on or before the first day of March in each year, make and file with the Commissioner of Insurance, a report of its affairs and operations during the year ending on the thirty-first day of December immediately preceding, which report shall be in such form as the Commissioner of Insurance may require. Such report shall be verified by such of the officers of the Association as the Commissioner of Insurance may direct. (Act Apr. 13, 1933, c. 241, §21.)

3445-22. Shall place "Assessment Benefit Association" on all printed matter.—Every association, operating under and by virtue of the provisions of this Act, shall include immediately under the name or title of the association the words "ASSESSMENT BENEFIT ASSOCIATION" in all printed matter, stationary, circulars, certificates, applications, advertisements or literature of any kind. (Act Apr. 13, 1933, c. 241, §22.)

3445-23. Existing associations to come under this act.—Within 6 months after the passage of this Act any association or corporation doing business in this State, and paying death benefits by means of assessment upon its members or voluntary contribution made by its members, (except organizations now exempted from the operation of the statutes of this state relating to life insurance companies and fraternal beneficiary associations and except corporations or associations now subject to regulation by the statutes of this state,) desiring to continue in operation shall come under the provisions of this Act by complying with the following: It shall present to the Commissioner of Insurance for filing, its articles of association and by-laws or proposed articles of association and by-laws, it shall furnish proper evidence that it has a bona fide contributing membership of at least 300, it shall make the deposit provided by Section 2 of this Act, it shall submit, at its own expense, to an examination of its business and transactions by by the Commissioner of Insurance or his deputies or employees. If the Commissioner of Insurance shall find that such association or corporation has met all of the requirements of this Act, he shall file such articles of association and upon proof of the record of a duplicate or certified copy of the same in the manner provided in this Act the Commissioner of Insurance shall issue to said association or corporation, a certificate of authority to do business. (Act Apr. 13, 1933, c. 241, §23.)

Act covers a voluntary payment association. Op. Atty. Gen., May 24, 1933.

Articles filed by existing corporations must contain recital of number of directors and names and addresses of directors elected to serve until first annual meeting, and "first annual meeting" means first annual meeting after issuance of license by commissioner of insurance. Op. Atty. Gen. (249a-2), July 19, 1934.

3445-24. Effective sixty days after passage of Act.—This Act shall take effect and be in force from and after 60 days after its passage. (Act Apr. 13, 1933, c. 241, §24.)

FRATERNAL BENEFICIARY ASSOCIATIONS

3446. Accident and sick benefits—Etc.

Children of divorced wife of insured in fraternal benefit policy, such children being by a former marriage, and second marriage being childless, held not entitled to take as beneficiaries. Brotherhood of L. F. & E. v. H. (DC-Minn), F5Supp598. See Dun. Dig. 4823.

In an action against a fraternal association for the recovery of money appropriated under the by-laws toward funeral expenses for a deceased member, facts held to support a finding that the association waived a strict performance of timely payment of monthly dues. Gleason v. D., 183M512, 237NW196. See Dun. Dig. 4841(24).

Member of fraternal benefit organization held bound by amendment of constitution excluding benefits from monoxide poisoning. Palmer v. O., 191M204, 253NW543. See Dun. Dig. 4818.

Evidence justified findings that defendant's local lodge was sole agency through which it transacted business with its membership; that officers of local lodge, by a long-continued course of conduct, had led its members to believe that payment of dues and assessments need not be made within time fixed by constitution and regulations of grand lodge; and that this practice was so general as to make it reasonably certain that members of local lodge knew thereof and acted thereon. Speck v. B., 193M140, 258NW29. See Dun. Dig. 4841.

Funds of fraternal beneficiary association are exempt from taxation. Op. Atty. Gen. (414d-8), Apr. 3, 1934.

3446-1. Societies not subject to insurance law.—That any aid society confining its membership to one religious denomination, not operating for profit, and not charging stipulated premiums, which has been so operating in this state for more than 30 years and which pays death benefits not exceeding $1,000.00 in any one case, shall not be subject to the insurance laws of this state. (Act Apr. 16, 1929, c. 202.)

3447. Fraternal beneficiary association defined—laws, etc.

Since the Amendment of 1927, fraternal beneficiary associations are permitted to issue contracts of endowment insurance. Op. Atty. Gen., Nov. 5, 1931.

3450. Scope of act.

179M255, 228NW919.

The United Mutual Life Insurance Company, insofar as it is transacting the insurance business of the Knights of Pythias, is to be regarded as a fraternal beneficiary association. Op. Atty. Gen., May 19, 1931.

3451. Benefits—reserves.—Every association transacting business under this act shall provide for the payment of death or disability benefits, or both, and may provide for the payment of benefits in case of temporary or permanent physical disability, either as the result of disease, accident or old age, provided, the period of life at which the payment of benefits for disability on account of old age shall not be under seventy years. Any such association may grant to its members extended and paid-up protection or such

withdrawal equities as its constitution and laws may provide; provided, that such grants shall in no case exceed in value the portion of the reserves to the credit of such members to whom they are made, and that such association shall show by an annual valuation made by a competent actuary approved by the commissioner of insurance that it is accumulating and maintaining for the benefit of such members the reserves required by the American Experience Table of Mortality with interest at the rate of four (4) per cent per annum, or by the National Fraternal Congress Table of Mortality with interest at rate of four (4) per cent per annum, and the association shall carry as a liability the reserves so determined, and that assets representing such reserves shall be held in trust for such members separate and distinct from assets belonging to members holding certificates on which such reserves are not maintained, and that the assets so held in trust shall not be used to pay any claims or benefits upon any certificates to members other than to the members for whom said assets are so held in trust.

Nor shall anything contained herein or contained in the laws of this state regulating fraternal benefit societies, orders or associations be held to restrict the right of any fraternal benefit society in the use of any surplus over and above the accumulation required by the table by which the rates computed and the accretions thereon, as prescribed by the laws or rules of the society, provided, the same are used for the common benefit of all the members.

Any fraternal benefit society which shall accumulate and maintain the assets required for the payment of benefits upon all contracts when valued by mortality and interest standards which provide reserves not less than those prescribed by the mortality tables and interest rates herein mentioned or the mortality tables and interest rates prescribed by law for life insurance companies, may enter into contracts with such persons in such forms and granting such benefits under such conditions as its laws may provide. ('07, c. 345, §5; G. S. '13, §3541; '19, c. 35, §1; '23, c. 224, §1; Apr. 25, 1931, c. 381.

This act amends section 3453 by implication and does away with the age of limitations and requirements as to medical examination in connection with contracts issued by fraternal beneficiary societies with requisite assets and reserves. Op. Atty. Gen., Nov. 5, 1931.

3452. Who may be beneficiaries.

Change of beneficiary named in benefit certificate may be upheld in equity, though not in strict accordance with contract, by-laws, etc. 45F(2d)421. See Dun. Dig. 4824 (46).

A divorced wife, who cannot claim as a dependent, is barred from claiming benefits. 175M462, 221NW721.

Foreign fraternal benefit association must conform to the statute with regard to payment of certificate. 175M 462, 221NW721.

Since association is powerless to waive the statute in regard to the beneficiary, a rightful claimant may successfully contest the right of the beneficiary named in the certificate, even though the association does not question such right. 175M462, 221NW721.

3453. Persons disqualified for beneficial membership.

Laws 1931, c. 381, amends this section by implication and does away with the age limitations and requirements as to medical examination. Op. Atty. Gen., Nov. 5, 1931.

3454. Annuity benefits for children.—Any fraternal beneficiary association authorized to do business in this state and operating on the lodge plan may provide in its constitution and by-laws, in addition to other benefits provided for therein, for the payment of death, annuity or endowment benefits upon the lives of children below the age of sixteen years at next birthday. Any person responsible for the support of a child may make application for such benefits; but neither such person nor the parent of such child need be a member of such association. Provided that such society has a class of adult membership carrying life insurance certificates at a rate of contribution at least equal to those known as National Fraternal Congress rates, or upon a table based upon the society's own experience of at least twenty years, covering not less than one hundred thousand lives, with an interest assumption of not more than four per centum per annum, or any higher standard at the option of the society, to which juvenile certificate holders shall be transferred without medical re-examination upon attaining the age of sixteen years. Any such association may, at its option, organize and operate branches for such children and membership in local lodges and initiation therein shall not be required of such children, nor shall they have any voice in the management of the association. The total benefits payable by such society as above provided shall in no case exceed the following amounts at ages at next birthday at the time of death, respectively as follows: One, $100.00; two, $200.00; three, $400.00; four, $600.00; five, $800.00; six to sixteen years where not otherwise authorized by law, one thousand dollars, and shall be payable to the estate of the child or to the person or persons responsible for the support of the child and named as beneficiary in the certificate. ('19, c. 20, §1; '21, c. 111; '25, c. 322, §1; '27, c. 277, §1; Apr. 4, 1929, c. 132, §1.)

Laws 1929, c. 132, §2, repeals all inconsistent acts or parts of acts.

Associations have a right to issue certificates providing for endowment benefits for children under sixteen years of age since the Amendment of 1929. Op. Atty. Gen., Nov. 5, 1931.

3458. Specified expense.

Subscription to guaranty fund of a mutual fire insurance company, held valid and binding, notwithstanding alteration and alleged fraud. 177M165, 224NW851.

3461. Certificates—Evidence—Amendments to charter, etc.—Every certificate issued by any association shall specify the maximum amount of benefit provided by the contract and shall provide that the certificate, the constitution and laws of the association and the application for membership and medical examination, signed by the applicant, shall constitute the contract between the association and the member and copies of the same certified by the secretary of the association, or corresponding officer, shall be received in evidence of the terms and conditions of the contract; and any changes, additions or amendments to said charter or articles of association, constitution or laws duly made or enacted subsequent to the issuance of the benefit certificate shall bind the member and his beneficiaries and shall govern and control the contract in all respects the same as though such changes, additions or amendments had been made prior to and were in force at the time of the application for membership. Provided, that any association hereafter organized or admitted to do business in this state shall in its certificates specify a fixed minimum amount of benefit. Provided, that any association now or hereafter organized or admitted to do business in this state may, with the approval of the Commissioner of Insurance, re-insure all or any part of the amount specified in such certificate in excess of the amount of Five Thousand Dollars in a company authorized to do business in this state. ('07, c. 345, §8; G. S. '13, §3544; Mar. 28, 1929, c. 102.)

With regard to by-laws enacted subsequent to issuance of a certificate of life insurance by a fraternal or beneficial order, this section contemplates only those changes that are reasonable, and a by-law enacted subsequent to issuance of such a certificate providing that there shall be no presumption of death after seven years' unexplained absence is unreasonable and void as to such a certificate. Cutler v. T., 192M72, 255NW824. See Dun. Dig. 4818.

3463. Real estate holdings—Investments—Loans to officers and directors.—Any association may invest its funds in and hold real estate for lodge and office purposes, and real estate acquired by foreclosure or received in satisfaction of loans, and may sell and convey the same. Any such association may also invest its funds in government, state, provincial, or county or municipal bonds, or bonds of any township, park or school district having taxing powers, provided that such bonds shall be a direct obligation on all the

taxable property within such municipality or district and the net indebtedness of such municipality or district shall not exceed ten (10) per centum of the value of all the taxable property therein, according to the last valuation for taxation preceding the issuance of said bonds; or in first mortgages or first mortgage bonds upon improved real estate for not exceeding fifty (50) per centum of the actual cash value thereof at the time of making the loan; or in any securities permitted by the laws of this state for the investment of the assets of life insurance companies; provided, however, that every foreign association shall be empowered to invest its funds in such securities as may be permitted by the laws of the state, province or country in which it is organized. Provided, however, that no such association shall loan any of its funds to any of its officers or directors. ('07, c. 345, §10; G. S. '13, §3546; '13, c. 359, §1; Apr. 11, 1929, c. 156.)

3465. Benefits exempted from process—Tax exemption.

The exemption applies to all beneficiaries whether resident or non-resident, 179M255, 228NW919.

The United Mutual Life Insurance Company, insofar as it is transacting the insurance business of the Knights of Pythias, is to be regarded as a fraternal beneficiary association. Op. Atty. Gen., May 19, 1931.

After transformation of fraternal beneficiary association into a legal reserve company, assessments collected on fraternal benefit certificates by new company are exempt from 2% tax. Op. Atty. Gen., May 18, 1933.

Funds of fraternal beneficiary association are exempt from taxation. Op. Atty. Gen. (414d-8), Apr. 3, 1934.

3466. Methods of forming association—Powers and duties of commissioner, etc.

Recitals in articles of incorporation of fraternal beneficiary association should plainly indicate that society is entitled to exemption status under §3485 and should indicate that its intention is to incorporate under §3466. Op. Atty. Gen. (11b-8), Aug. 28, 1934.

3468. Mergers and reinsurance.—No fraternal benefit society organized under the laws of this state to do the business of life, accident or health insurance shall consolidate or merge with any other benefit society or reinsure its insurance risks or any part thereof with any other fraternal benefit society, or assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, except as herein provided. No fraternal benefit society or subordinate body thereof shall merge, consolidate with or be reinsured by any company or association not licensed to transact business as a fraternal benefit society; provided, that any fraternal benefit society organized under the laws of this state having an insurance membership in good standing at the time of reinsurance, merger or consolidation of not more than five thousand members, and which has been engaged in business for more than fifteen years prior to such time, may be reinsured by or consolidate or merge with any life insurance company organized under the laws of Minnesota. ('19, c. 42, §1; Mar. 9, 1929, c. 63, §1.)

3468-1. This act shall take effect and be in force from and after its passage, and shall apply to reinsurance, merger or consolidation contracts heretofore or hereafter made. (Act Mar. 9, 1929, c. 63, §2.)

3481. Domestic associations—Dissolution.

177M616, 224NW854; note under §3482.

3482. Proceedings to be instituted.

Injunction refused on authority of Bair v. Modern Samaritan, 162M274, 202NW498; 177M616, 224NW854.

3485. Certain organizations exempted.—Nothing contained in this act shall be construed to affect or apply to grand or subordinate lodges of Masons, Odd Fellows, Elks or Knights of Pythias—exclusive of the insurance branch of the supreme lodge Knights of Pythias—or to similar orders which do not issue insurance certificates, nor to societies which admit to membership only persons engaged in one or more hazardous occupations, in the same or similar lines of business, nor to local lodges of an association which was doing business in this state at the time of the enactment of General Laws 1907, Chapter 345 [§§3447 to 3488], that provide death benefits not exceeding three hundred dollars to any one person, or disability benefits not exceeding three hundred dollars in any one year to any one person, or both, except that all foreign associations, transacting business in this state shall comply with the provisions of Section 3475, General Statutes 1923, nor to any contracts of reinsurance of, or between such local lodges of such association now doing business on such a plan in this state, nor to domestic associations which limit their membership to the employees of a particular city or town, designated firm, business house or corporation; nor to domestic lodges, orders or associations of a purely religious, charitable and benevolent description, which do not operate with a view to profit, and which do not provide for a death benefit of more than one hundred dollars, or for disability benefits of more than one hundred and fifty dollars to any one person in any one year, nor to any domestic lodge, order, or association which was incorporated under the laws of this state prior to the year 1917 and has been doing business in this state since such incorporation and which now has not less than $4,000.00 in cash or in securities acceptable to the commissioner of insurance and which has heretofore agreed in its constitution or by-laws to pay $300.00 as death benefits and $200.00 as funeral expenses and which does not operate with a view to profit and which shall hereafter pay no funeral expenses and pay not more than $300.00 as death benefits, and shall hereafter collect from its members at their then attained ages regular payments or assessments not lower than those required by the national fraternal congress table of mortality, with interest at four per cent per annum, provided, always, and save and except as in this section otherwise specifically modified, limited or qualified, that any such domestic order or association which has more than five hundred members, and provides for death or disability benefits, and any such domestic lodge, order or association which issues to any person a certificate providing for the payment of benefits, shall not be exempt by the provisions of this section, but shall comply with all the requirements of this act. The insurance commissioner may require from any association such information as will enable him to determine whether such association is exempt from the provisions of this act. No association which is exempt by the provisions of this section from the requirement of this act, shall give or allow or promise to give or allow to any person any compensation for procuring new members. ('07, c. 345, §28; G. S. '13, §3564; '21, c. 339, §1; '25, c. 393; Mar. 13, 1931, c. 55.)

Recitals in articles of incorporation of fraternal beneficiary association should plainly indicate that society is entitled to exemption status under §3485 and should indicate that its intention is to incorporate under §3466. Op. Atty. Gen. (11b-8), Aug. 28, 1934.

3487. Definitions—Deputy commissioner to act.

Foreign fraternal benefit association must conform to the statute with regard to payment of certificate. 175M 462, 221NW721.

3491-1 Fraternal beneficiary associations may become mutual life insurance companies. That any domestic fraternal beneficiary association organized and operating under the laws of this state, and with a membership of less than five thousand, and not less than one thousand, composed of both male and female, and on a solvent basis according to a recognized table of mortality acceptable to the commissioner of insurance of this state, may upon two-thirds vote of its supreme legislative and governing body amend its articles of incorporations and laws in such manner as to transform itself into a mutual life insurance company with the name by which it is already known, or another name, as its supreme legislative and governing body shall determine, provided that a thirty-day written notice be given by mail to

all policy holders stating the object of said meeting, and; provided that the proposed plan for reorganization or reincorporation shall be submitted to and be subject to the approval of the commissioner of insurance of this state; and upon so doing, and upon procuring from the commissioner of insurance said approval and a certificate of authority as prescribed by law to transact business in this state as a mutual life insurance company, it shall incur the obligations and enjoy the benefits thereof the same as though originally thus incorporated; and such corporation under its articles and by-laws as so framed or amended shall be a continuation of the original organization, and the officers thereof shall serve until their successors shall be elected as provided by the amended articles or by-laws of such company as thus reorganized provide; but such incorporation, amendment or reincorporation shall not affect existing suits. (Act Apr. 18, 1929, c. 239, §1.)

3491-2. Powers and duties.—The company so reorganized, and its officials, shall exercise all the rights and powers and perform all the duties conferred or imposed by law upon organizations writing the kinds of insurance written by said company so reorganized, and all outstanding policy contracts shall be recalled and new contracts issued based upon the same table of rates and reserves, but in form required by law for the company as reorganized, provided, however, that the minimum reserve requirements shall be based on the tables upon which said policy contracts are based if acceptable to the commissioner of insurance of this state. Such organization and its officials shall exercise all the rights and powers and have full authority to perform all the duties necessary to protect rights and contracts existing prior to reorganization. The commissioner of insurance shall exercise the powers and discharge the duties concerning any such company so reorganized that are applicable to companies writing insurance or issuing policies of the same class, organized or operating in this state. The commissioner of insurance shall issue a certificate of authority to any such company so reorganized which is in a solvent condition and has fully complied with the laws of this state, to transact such insurance business in this state. (Act Apr. 18, 1929, c. 239, §2.)

3491-3. Inconsistent acts repealed.—All acts or parts of acts inconsistent with the provisions of this act are hereby repealed. (Act Apr. 18, 1929, c. 239, §3.)

FIRE INSURANCE COMPANIES

3512. Standard fire policy.

1. In general.

Evidence held sufficient to sustain a finding of breach of contract to insure. 171M363, 214NW58.

Claim under fire policy was not subject to garnishment prior to proof of loss though there had been an adjustment of the amount of the loss under a non-waiver agreement. 172M43, 214NW762.

Township mutual companies are not required to use standard form prescribed by this section, and where policy so provided no recovery could be had by mortgagee where property had been transferred by owner without written approval of insurer. 172M122, 214NW 926.

Evidence held to show that explosion in gasoline filling station was caused by an innocent or friendly flame or fire so that loss caused by the explosion was not recoverable. 174M122, 218NW457.

Lessee's right of recovery of loss of fixtures which were to become the property of the lessor was limited to value of use during term. 179M510, 229NW792.

The business of fire insurance is affected with a public interest and is subject to control and regulation by the state. 181M518, 233NW310. See Dun. Dig. 4640(98).

Whether storing of alcohol by tenant was within control of insured, landlord, within meaning of policy, so as to void insurance, was for jury. Schaffer v. H., 183M101, 235NW618. See Dun. Dig. 4769.

The evidence is conclusive that the operation of a still and the storing of alcohol in the ordinary barn increased the fire hazard as to such structure. Schaffer v. H., 235 NW618. See Dun. Dig. 4769.

One holding registered title to real estate and in actual possession has an insurable interest therein. Fuller v. M., 187M447, 245NW617. See Dun. Dig. 4641.

Where two provisions of an insurance policy conflict, policy is to be construed as a whole and in favor of insured to avoid a forfeiture wherever possible. Holtorf v. R., 190M44, 250NW816. See Dun. Dig. 4659, n. 81.

In action for damages for failure to place fire insurance on property, mortgagee is not necessary party. Spinner v. M., 190M390, 251NW908.

In action for damages for failure of defendant to procure fire insurance on building, defendant cannot complain that plaintiff's damages should be ascertained on same basis as if he had a standard policy issued by defendant, such as option to repair or rebuild. Id.

In action for breach of contract to take out fire insurance on plaintiff's building, whether breach arose from neglect or other cause would have no bearing on defendant's liability to respond in damages for loss actually caused plaintiff. Id.

Fire insurance policy issued on a barn known by the company to contain an actively operating illegal still is void as against public policy. Vos v. A., 191M197, 253 NW549. See Dun. Dig. 1871.

Insurer was liable on policy of insurance on property in village burned while fire truck was illegally out of village answering fire call. Op. Atty. Gen., Feb. 25, 1929.

1½. Insurable interest.

A husband has an insurable interest in a homestead, title to which is held by his wife with whom he is living. 178M305, 227NW39.

Husband and wife each have an insurable interest in furniture regardless of ownership. 178M305, 227NW39.

1¾. Property covered.

Fire insurance covering stock of goods in building and sheds, etc., attached to and communicating with said building, held to cover goods in basement room under and adjoining basement building. Elliott v. R., 183M556, 237 NW421. See Dun. Dig. 4761.

3. Increased risk.

Whether owner of farm had knowledge that cropper was maintaining a still and thus increasing risk from fire held for jury. Schaffer v. H., 183M101, 236NW327. See Dun. Dig. 4769.

Permitting a tenant to operate a still in a barn on a farm increased the risk of fire within the meaning of a policy. Schaffer v. H., 183M101, 236NW327. See Dun. Dig. 4769.

In action on fire policy, evidence held to sustain finding that insured landlord had knowledge that tenant increased hazard by maintaining still in his barn. Schaffer v. H., 187M310, 245NW425. See Dun. Dig. 4769.

Where one provision of fire policy provides no loss will be paid on any buildings in which gasoline is stored and another provision provides that it shall be void if risk is increased by any means within control of insured, owner of farm without knowledge that tenant had stored gasoline in building was entitled to recover. Holtorf v. R., 190M44, 250NW816. See Dun. Dig. 4772.

7. Mortgage clause.

Evidence held not to establish that intervener was a mortgagee entitled to participate in proceeds of fire policy. Gibson v. G., 184M490, 239NW225. See Dun. Dig. 6275.

Interest of mortgagee in insurance effected by mortgagor's grantee. 16MinnLawRev447.

Mortgagee's rights under standard mortgage clause. 16MinnLawRev597.

Assignment of mortgagee's rights under standard mortgage clause. 16MinnLawRev866.

Standard mortgage clause. 19MinnLawRev125.

7½. Fraud.

Evidence is ample of perjury and fraud committed after fire loss to submit that defense to jury. Zane v. H., 191M382, 254NW453. See Dun. Dig. 4778.

Evidence held to warrant submission to jury of fraud in obtaining overinsurance from each defendant. Id. See Dun. Dig. 4740, 4766.

Record held to show that verdict was predicated solely upon proof that plaintiff insured caused his brother to set fire and by perjury and fraud in the proofs of loss to collect the overinsurance obtained. Id.

Where under fire insurance policy agreed damage to insured's property was $1,118.61 and insured, in submitting proofs of loss, included therein a bed, valued at $3.50, which he did not in fact own, in absence of an admission on insured's part, or very clear proof, that this representation was willfully false and such as was calculated to deceive insurer, it will be held as a matter of law that such was not a willful misrepresentation, but was the result of inadvertence or mistake, and hence did not avoid the policy. Goldberg v. G., 193M600, 259 NW402. See Dun. Dig. 4778.

7¾. Arson.

By circumstantial evidence defendants satisfactorily established that fire which damaged insured property was incendiary by plaintiff's procurement. Zane v. H., 191M382, 254NW453. See Dun. Dig. 4779.

8. Vacancy.

Where evidence showed that 400 tons of ice were stored in icehouse at time of fire, trial court did not err in refusing to submit issue of vacancy to jury and in holding as a matter of law that icehouse was not vacant. Romain v. T., 193M1, 258NW289. See Dun. Dig. 4768.

9. What constitutes total loss.
Where building is destroyed by fire in excess of 50% and city ordinance makes it unlawful to alter or repair such building, insured is entitled to recover total loss. Zalk & Josephs Realty Co. v. S., 191M60, 253NW8. See Dun. Dig. 4780.

9¼. Repair or rebuilding.
Under valued policy on building, in Minnesota standard form, insurer has option, in case of loss, to repair or rebuild. Rule applied to total loss of dwelling. Curo v. C., 186M225, 242NW713. See Dun. Dig. 4840a.

When an insurer under a valued Minnesota standard fire insurance policy properly elects to rebuild, parties are deemed to have made a new contract under which insurer is obligated to restore building to its former condition. Cussler v. F., 194M325, 260NW353. See Dun. Dig. 4803.

Under such a contract, insured is subject to an implied promise to render insurer reasonable aid and co-operation necessary to enable it to restore building as nearly as may be. If insured refuses such aid and instead brings suit on policy, notifying insurer that, if it proceeds with rebuilding, it will do so at its own peril, insured has so breached building contract as to justify insurer in failing to proceed with rebuilding pending outcome of action on policy. Id. See Dun. Dig. 4803.

9¾. Evidence.
Evidence held insufficient to sustain finding renewal of policy. 178M526, 227NW850.

Proof of custom as to renewals. 178M526, 227NW850.

Admissibility of evidence in action on fire policy by lessee who had made improvements and was deprived of use of premises. Harrington v. A., 183M74, 235NW535. See Dun. Dig. 4781c(48).

Evidence sustains finding a total loss of a building insured against fire. Supornick v. N., 190M19, 250NW 716. See Dun. Dig. 4780.

Where only issue was whether there was total loss, evidence as to what plaintiff paid insured for assignment was immaterial. Id.

After defendant's witness testified that loss was not total and that building could be restored to condition it was in before fire for a sum certain, there was no error in excluding as immaterial question, "Would you have undertaken the job at that figure?" Id.

Evidence held to sustain finding that a farm owner had no knowledge of fact that a tank of gasoline was stored in barn by her tenant. Holtorf v. R., 190M44, 250NW816. See Dun. Dig. 4772.

In action on fire policy defended upon ground of incendiarism by insured, burden of proof was upon defendant to show insured's connection with the starting of the fire, and no question was raised for jury by mere proof that fire was incendiary. Barich v. P., 191M628, 255NW80. See Dun. Dig. 4779.

10. Arbitration.
Award of arbitrators must fall where it was made by umpire and one appraiser, the other appraiser not joining therein, and it appeared that umpire did not consider at all a basic fact issue. 172M314, 215NW65.

The agreement in the standard policy for arbitration or appraisal is not revocable, but is a method fixed by statute for finding loss in the event of disagreement and is binding upon insurer and insured. 181M518, 233NW310. See Dun. Dig. 4793.

The provision in the Minnesota standard policy for arbitration or appraisal in case of disagreement as to loss is not violative of article 1, §§4 and 7, of the State Constitution or of the Fourteenth Amendment of the Federal Constitution. 181M518, 233NW310. See Dun. Dig. 1646, 4793(85), 5227.

The provision of arbitration is not unconstitutional. Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, aff'g 181Minn518, 233NW310. See Dun. Dig. 4793.

10½. Appraisal.
This section is constitutional, following Abramowitz v. Continental Ins. Co., 170M215, 212NW449, 175M73, 220NW 425.

Duties of board of appraisers—questions for determination—effect of appraisal. 175M73, 220NW425.

Grossly inadequate or excessive award may be set aside by a court. 179M510, 229NW792.

An award of appraisers under a policy of insurance will not be vacated unless for fraud or misfeasance or malfeasance on the part of the appraisers. Robertson v. B., 184M470, 239NW147. See Dun. Dig. 4797.

Inadequacy of an award may be evidence of fraud or malfeasance or misfeasance and may be so gross as to establish it. Robertson v. B., 184M470, 239NW147. See Dun. Dig. 4797.

10⅞. Reformation of policy.
Building contractor who had only inchoate lien on land held entitled to reformation of fire insurance policy naming him as a mortgagee. Consolidated Lumber Co. v. M., 189M370, 249NW578. See Dun. Dig. 8331.

Courts are liberal in reformation of insurance contract to carry out intention of parties. Schmit v. D., 189M420, 249NW580. See Dun. Dig. 8328.

Policy of fire insurance issued to an administrator of estate and "legal representatives" of a person deceased, for a period of three years, and paid for out of funds of estate, was properly reformed to express real intention of parties and cover interest of the heir in whom the title was when policy issued. Miller v. P., 191M586, 254NW915. See Dun. Dig. 4649, 4652a.

13. Estoppel and waiver.
181M8, 231NW401.

Jury's finding that insurance company through its agents knew of existence of an actively operating still in barn on which it wrote insurance held supported by evidence. Vos v. A., 191M197, 253NW549. See Dun. Dig. 4678.

3513. Automobile fire insurance policies.
The reference (§3305) in this section should read (§3315).

3515. Violation of preceding section.
Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US151, 52SCR69, aff'g 181Minn518, 233NW310; §3512, note 10.

3516. Whole amount collectible—Co-insurance, etc.
Curo v. C., 186M225, 242NW713.

It was not error for trial court to refuse to allow amendment of answer to show icehouse was purchased by plaintiff for $1,000 shortly before fire occurred, since, under "valued policies," insurable value therein stated ($12,000) controls, in absence of intentional fraud on insured's part. Romain v. T., 193M1, 258NW289. See Dun. Dig. 4760.

It was not error to exclude evidence of wreckage value of icehouse. Id. See Dun. Dig. 4780.

Effect of falsification of application by soliciting agent. 16MinnLawRev422.

3518. Payment to mortgagee.
Where only mortgagee was beneficiary under fire policy and mortgagor paid mortgage after a fire, the insurer was discharged from any liability. McKay v. N., 182M 378, 234NW589. See Dun. Dig. 4801, 6275.

3520. Liability of company.
A mutual insurance company is liable upon a policy issued to a school district, even though latter has no right to become a member. Op. Atty. Gen., Sept. 9, 1932.

3530. Directors to call upon stockholders to make up impairment.
Insurance company may issue preferred stock which shall not be subject to any double liability, but such stock may not be exempted from assessment to make up impairment of capital. Op. Atty. Gen., Sept. 26, 1933.

HAIL INSURANCE

3532–1. Policies—Provision for adjustment of loss.
Mere delay of insurance company in acting upon an application for hail insurance does not give rise to an action ex delicto. Tjepkes v. S., 193M505, 259NW2. See Dun. Dig. 4642.

MUTUAL FIRE COMPANIES AND LLOYDS

3536–1. Powers of mutual fire insurance companies.
—That any company heretofore organized and doing business under subdivision (1) of Section 3536, Mason's Minnesota Statutes for 1927, and which for fifteen years prior to the passage of this act has insured creamery and cheese factory buildings, their contents and equipments, and the dwelling houses and contents and barn, livestock and vehicles of the owner of such creamery or factory, and which has assets of $100,000.00, may issue policies in addition thereto to cover farmers' elevators, cooperatively owned warehouses, cooperative filling stations, cooperative oil companies and all cooperatively owned or organized enterprises. (Act Apr. 1, 1935, c. 97, §1.)

Sec. 2 of Act Apr. 1, 1935, cited, provides that the act shall take effect from its passage.

MISCELLANEOUS PROVISIONS REGARDING VARIOUS KINDS OF MUTUAL COMPANIES

3542. Provisions as to policies lapsing.
Where a mutual insurance company so acts as to lead member to believe that policy is still in force, company cannot thereafter and upon occurrence of a loss assert a contrary position. Green v. M., 190M109, 251NW14. See Dun. Dig. 4686.

3546. Restrictions.—When the articles of incorporation of any mutual insurance company, not having a guaranty fund of the amount required by Section 1 [§3545] of this Act, so provide, it may transact any and all kinds of business as set forth in Subdivisions 1 to 14, inclusive, of Chapter 138, Laws of 1915, as amended by Chapters 29 and 276, Laws of 1917 and Chapter 413, Laws of 1919 [§3315], subject to the conditions and restrictions as to the kinds of insurance which may be combined by a like stock in-

surance company, and subject to all restrictions contained in the Laws of this State with reference to general writing mutual insurance companies transacting the same kinds of business; provided that nothing in this section contained shall be construed as prohibiting a company issuing policies with a contingent liability from creating a guaranty fund as authorized by Section 4 of this Act. Any mutual company, however organized, may amend its articles so as to provide for the doing of two or more of the kinds of business specified in said Subdivisions 1 to 14, inclusive, of Chapter 138, Laws of 1915, as amended by Chapters 29 and 276, Laws of 1917, and Chapter 413, Laws of 1919. ('21, c. 200, §2; '23, c. 159, §2; Mar. 28, 1929, c. 98, §1.)

3547. Prerequisites of mutual companies transacting business other than life, fire, accident, etc.—No mutual insurance company hereafter organized shall be licensed to transact any of the kinds of business specified in subdivisions 3, 5, 6, 8, 9, 10, 12, 13 and 14 of Chapter 138, Laws 1915 [§3315], as amended, except upon compliance with the following conditions:

(a) It shall have not less than three hundred bona fide applications for policies of insurance of each kind sought to be written, signed by at least three hundred members, covering at least three hundred separate risks, each risk, within the maximum net single risk described herein and one year's premiums thereon paid in cash, and shall have admitted assets of not less than $10,000, which admitted assets shall not be less than five times the maximum net single risk, as hereinafter defined, and shall have on deposit with the commissioner of insurance of this state, as security for all of its policy-holders, stocks or bonds of this state or of the United States or bonds of any of the municipalities of this state, or personal obligations secured by first mortgage on real estate within this state worth, exclusive of buildings, the amount of the lien, and bearing interest of not less than three per cent per annum, to an amount, the actual market value of which, exclusive of interest, shall never be less than ten thousand dollars. Provided, however, that no such company shall be authorized to insure against loss or damage by the bodily injury or death by accident of any person employed by the insured, for which the insured is liable under the so-called "Workmen's Compensation Law," unless and until such company shall comply with the provisions of Mason's Minnesota Statutes of 1927, Section 3566 to 3585, inclusive.

(b) It shall not expose itself to any loss on any one risk or hazard, except as hereinafter provided, in an amount exceeding 10 per cent of its net assets, actual and contingent; such contingent assets being the aggregate amount of the contingent liability of its members for the payment of loss and expenses not provided for by its cash funds. Such contingent liability, for the purpose of this act, to be an amount not to exceed one annual premium as stated in the policy. No portion of any such risk or hazard which shall have been reinsured, as authorized by the laws of this state, shall be included in determining the limitation of risk prescribed by this section. For the purpose of transacting employers' liability and workmen's compensation insurance, each employee shall be considered a separate risk for determining the maximum single risk.

(c) It shall maintain unearned premiums and other reserves, separately for each kind of business upon the same basis as that required of domestic stock insurance companies transacting the same kind of business.

(d) Except as herein expressly provided, it shall comply with all the provisions of the laws of this state relating to the organization and internal management of mutual fire insurance companies insofar as the same may be applicable and not inconsistent herewith.

(e) All policies issued by such companies shall provide for a premium or premium deposit payable in cash, and except as herein provided, for a contingent liability of the members at least equal to the premium or premium deposit as adjusted by audit if any. If at any time the admitted assets are less than the reserves and other liabilities, the company shall immediately collect upon policies with a contingent liability a sufficient proportionate part thereof to restore such assets, and the commissioner may, when such deficiency does not exceed 10 per cent of its admitted assets, by written order direct that proceedings to restore such assets be deferred during the period of time fixed in such order. The contingent liabilities, if any, of the policyholders shall be plainly and legibly stated in every policy in terms of either dollars or premiums. ('21, c. 200, §3; Mar. 28, 1929, c. 98, §2, and Apr. 21, 1931, c. 288.)

This section does not apply to mutual companies writing fire insurance other than on automobiles. Op. Atty. Gen., Dec. 3, 1931.

Mutual insurance company organized prior to passage of Laws 1931, c. 288, may amend articles of incorporation so as to engage in public liability insurance without being subject to limitations found in this section. Op. Atty. Gen. (487a-1), Oct. 1, 1934.

3553-1. Mutual insurance companies may reinsure.—Any mutual insurance company organized under the laws of this State for the purpose of insuring property against loss or damage by fire, hail, tornadoes, cyclones and hurricanes, or any of said causes, may at any time reinsure its business in and consolidate with any other mutual insurance company organized under the laws of this State for the purpose of insuring property against loss or damage from any of said causes.

To so consolidate it shall be necessary

(1) That a resolution, reciting the terms and conditions of the proposed contract, be adopted by each of said companies by a two-thirds' vote of its members represented, present and voting at any regular meeting or at a special meeting called for that purpose. Thirty days' printed or written notice shall be previously given to each member of each of such companies of the time when and place where such meeting is to be held, reciting the purpose thereof. Mailing of such notice to the last-known address of the member shall be deemed sufficient notice of such meeting.

(2) That certified copies of such resolutions, together with a copy of such contract, shall be filed with the Commissioner of Insurance. Such contract shall not become effective until approved by the Commissioner of Insurance and such approval shall not be given unless the Commissioner is satisfied that the interests of the policyholders of both of such companies are fully protected and that the contract is just and equitable. (Act Apr. 16, 1931, c. 179.)

MUTUAL AUTOMOBILE INSURANCE COMPANIES

3554. Mutual automobile insurance companies.—Any number of persons not less than five may associate themselves together and form an incorporated company to insure against loss or damage to automobiles or other vehicles and their contents, by collision, fire, burglary, theft, hail, windstorm or tornado, and against liability for damage to property of others by collision with such vehicles. ('19, c. 429, §1; '21, c. 288, §1; Apr. 10, 1933, c. 194.)

3559. Additional coverage.—Any such company which shall have and maintain at all times admitted assets of not less than Seventy-five Thousand Dollars, or which shall set aside and maintain over and above its liabilities and the reserves required by law of like stock insurance companies a guaranty fund available for the payment of losses and expenses of at least Fifty Thousand Dollars, shall when its certificate of incorporation so provides, be permitted to insure against damage to persons of others by collision with automobiles or other vehicles and against any loss or hazard incident to the ownership, operation or the

use of motor or other vehicles; provided that the net single risk, after deducting reinsurance, of any such company having less than One Hundred Thousand Dollars of admitted assets shall not exceed Three Thousand Dollars. Where a membership fee is charged the amount thereof shall be specified or included in the consideration clause of the policy. ('21, c. 288, §4B; Mar. 28, 1929, c. 99.)

MUTUAL EMPLOYERS' LIABILITY ASSOCIATIONS

3567. Form of certificate.

Under employees' benefit policy providing for indemnity for disabling illness contracted and beginning after policy was in force for 15 days, recovery could be had for illness which first became manifest after 15 days, though germs were in body before expiration of 15 days. Smith v. B., 187M202, 244NW817. See Dun. Dig. 4867.

An employer's policy held to be a liability policy as distinguished from an indemnity contract. Trandum v. T., 187M327, 245NW380. See Dun. Dig. 4867.

3569. Number of policies to be subscribed for before commencing business.—Such associations shall not begin to issue policies until a list of subscribers, with the number of employes of each which, in the aggregate must number in the aggregate, not less than five thousand, together with such other information as the commissioner of insurance may require, shall have been filed at the insurance department, nor until the president and secretary of the association shall have certified under oath that every subscription in the list so filed is genuine and made with an agreement of all the subscribers that they will take the policies subscribed for within thirty (30) days of the granting of a license by the commissioner of insurance; provided that in case of associations organized exclusively for the purpose of insuring creameries, cheese factories and livestock shipping associations such associations may begin to issue policies when the number of employes insured aggregates three hundred; provided, further, that any company organized under this section and which for fifteen years prior to the passage of this act has exclusively insured creameries, cheese factories and livestock shipping associations, and which has assets of $100,000.00, or more, may write public liability and compensation insurance coverage of creameries, cheese factories, shipping associations, farmers' elevators, cooperatively owned warehouses, cooperative filling stations, cooperative oil companies and all cooperatively owned or organized enterprises. ('13, c. 122, §4; G. S. '13, §3442; '15, c. 6, §1; '19, c. 317, §1; Apr. 11, 1935, c. 136, §1.)

Sec. 2 of Act Apr. 11, 1935, cited, provides that the act shall take effect from its passage.

3587. Reciprocal of inter-insurance contracts.

Reciprocal or interinsurance exchange may be adjudiciated an involuntary bankrupt. 36F(2d)371.

INSURANCE ON STATE BUILDINGS AND PROPERTY

3599. State property—Rural Credits Bureau may insure buildings.—No public funds shall be expended on account of any insurance upon state property against loss or damage by fire or tornado, nor shall any state officer or board contract for or incur any indebtedness against the state on account of any such insurance, except that the state board of control is authorized in its discretion to insure the state of Minnesota against loss by fire or tornado to the state prison at Stillwater, or the contests hereof, in any insurance companies licensed to do business in this state, in such an amount as such board may from time to time determine, and to pay the premiums therefor from the revolving fund of said institution; except also that the rural credit bureau is authorized in its discretion to insure in such companies the state of Minnesota against loss by fire or tornado of buildings upon real estate acquired by the bureau and in such amounts as such bureau may from time to time determine, and to pay the premiums therefor from the rural credit expense fund. ('21, c. 288, §4B; Mar. 22, 1929, c. 78.)

University may insure its property against fire and tornado, but may not insure against public liability (not being liable for damages for personal injuries), provided the premiums are not paid out of appropriations made by the legislature. This right arises under Const., Art. 8, §4. Op. Atty. Gen., Nov. 4, 1929.

Master track scale Minnesota Transfer may not be insured. Op. Atty. Gen. (252k), Feb. 21, 1935.

FIRE INSURANCE RATING BUREAUS AND RATE REGULATION

3608. Rating agreements to be submitted for approval to insurance commissioner.—No fire insurance company or any other insurer and not rating bureau, or any representative of any fire insurance company or other insurer or rating bureau, shall enter into or act upon any agreement with regard to the making, fixing or collecting of any rate for fire insurance upon property within this state, unless in compliance with this act.

Such agreement must be in writing, and, prior to its taking effect, must be approved by the commissioner of insurance, and a copy thereof, together with a copy of the order of approval, be filed with the commissioner of insurance and with each rating bureau of which any of the parties thereto shall be a member or subscriber.

The commissioner of insurance, shall, after notice to interested parties and hearing, as provided in Section 3609, General Statutes 1923, make an order either approving or disapproving any such agreement. Such order shall be subject to review by the district court, in the same manner provided in Section 3609, General Statutes 1923. ('15, c. 101, §5; Apr. 24, 1929, c. 321, §1.)

3609. Commissioner to review rate fixed by bureau—Appeals.—The commissioner of insurance shall have power, at any time, on written petition or upon his own motion, to review any rate fixed by any bureau for fire insurance upon property within this state for the purpose of determining whether the same is discriminatory or unjust. He shall have power to order the discrimination or unjust rate removed and fix and order a rate in lieu of the bureau rate found to be discriminatory or unjust and the rate so ordered and fixed shall become the bureau rate.

No increase in fire insurance rates affecting the general rates or rating classification in the entire state or in an entire zone, city, village, town, county or other political subdivision, shall go into effect until the same has been approved by the commissioner of insurance after notice to the interested parties hereinafter provided and hearing thereon. Provided that the commissioner of insurance may also hold a hearing on any decrease of rates as herein provided at his discretion.

Proceedings for the review of any rate increase fixed by any bureau or for an increase in fire insurance rates affecting the entire state or an entire zone, city, village, town or county shall be had as follows: Upon the institution of such proceedings or the filing of a petition for an order approving an increase in rates, the commissioner shall make an order fixing a time and place for a public hearing and shall give notice of said hearing by mailing a copy of said order to the chief executive officer and the recording officer of each political subdivision affected by such change at least three weeks prior to the date fixed by such order; provided that the insurance commissioner in his discretion may give additional notice by publication of a copy of said order in a legal newspaper in the seat of government in the various political subdivisions affected.

Any person aggrieved by any such order or decision made by the commissioner of insurance may appeal therefrom to the district court of the county where the aggrieved party may reside within thirty (30) days from the making and filing of such order or

decision by filing in the office of said commissioner a notice of such appeal in writing, and in such case the said commissioner shall within ten (10) days after the filing of such notice make and return to said district court a full and complete certified transcript of the findings and order appealed from, and of all parts relating thereto on file in his office, including such notice of appeal, and upon the filing of such certified transcript such appeal and all matters involved therein shall be brought on for trial upon the merits at the next term of said court after the filing of such transcript, unless otherwise ordered by the court; and upon such trial the findings of fact on which said order is based shall be prima facie evidence of the matters therein stated.

During the pendency of such proceedings upon review the order of the commissioner of insurance shall be suspended, but in event of final determination against any insurer, any overcharge by such insurer during review shall be refunded to the persons entitled thereto. ('15, c. 101, §6; Apr. 24, 1929, c. 321, §2.)

COMPENSATION INSURANCE BUREAU

3612. Definitions.—The word "insurer" as used in this act means any insurance carrier authorized by license issued by the department of insurance to transact the business of workmen's compensation insurance in this state. The word "insurance" as used in this act means workmen's compensation insurance and insurance covering any part of the liability of an employer exempted from insuring his liability for compensation as provided in Section 4288. The word "board" means the compensation insurance board. ('21, c. 85, §1; Apr. 25, 1931, c. 353, §1.)

Sec. 2 of Laws 1931, c. 353, provides that the act shall take effect from and after July 1, 1931.

Northern States Contracting Co. v. O., 191M88, 253NW 371; note under §4291.

This act is not retroactive and the rates adopted apply only to contracts of insurance entered into after July 1, 1931. Op. Atty. Gen., May 20, 1931.

3618. Duties—Rates of insurance.

A binder and policy of insurance held not to have imposed upon the insurer liability for a premium deposit paid to former insolvent insurer. 177M36, 224NW253.

Only such system of schedule rating may be used as has received approval of compensation insurance board, and compensation rating bureau must use system of schedule so approved. Op. Atty. Gen., Jan. 18, 1934.

3620. Classification of workmen's compensation insurance.—No classification for compensation insurance purposes shall be effective until approved as correct by the board. No rule or regulation with reference to compensation risks filed by any insurer or by the bureau herein provided shall be effective until approved by such board. No kind of insurance covering any part of the liability of an employer exempted from insuring his liability for compensation as provided in Section 4288 shall be effective in this State unless approved by the Board. If it shall appear at any time that reasonable doubt on the part of the board as to the property classification or rate for any risk exists, such risk may be bound for insurance subject to rate and classification to be established therefor. ('21, c. 85, §9; Apr. 25, 1931, c. 392, §1.)

Sec. 2 of Act Apr. 25, 1931, c. 392, provides that the act shall take effect from and after July 1, 1931.

3622. Insurers shall be members of bureau.

The Minnesota Compensation Rating Bureau may legally devise a plan for making test payroll audits for the purpose of verifying audits made by or on behalf of insurance carriers. Op. Atty. Gen., Oct. 20, 1931.

The Compensation Insurance Board may order the Minnesota Compensation Rating Bureau to devise a plan for making test payroll audits for the purpose of verifying audits made by or on behalf of insurance carriers. Op. Atty. Gen., Oct. 20, 1931.

3628. Bureau shall make classification.

Op. Atty. Gen., Oct. 20, 1931; note under §3622.

3632. Rates to be uniform—Exceptions.

Endorsement on workmen's compensation insurance policy providing for return of part of premium in event risk experience of policy holder is not a violation of rate regulation. Op. Atty. Gen. (249b-22), May 1, 1934.

It is not necessary to advertise for bids in connection with premiums for compensation insurance. Op. Atty. Gen. (517j), Aug. 20, 1934.

3634-1. Insurance companies must insure in certain cases.—It shall be the duty of companies carrying workmen's compensation insurance and being members of the rating bureau of Minnesota, as defined in the statutes of this state, to insure and accept any workmen's compensation insurance risk which shall have been tendered to and rejected by any three members of said bureau, in the manner herein provided. (Act Apr. 18, 1929, c. 237, §1.)

3634-2. Bureau to fix premium rates.—When any such rejected risk is called to its attention and it appearing that said risk is in good faith entitled to coverage, said bureau shall fix the initial premium therefor, and upon its payment, said bureau shall designate a member whose duty it shall be to issue a policy containing the usual and customary provisions found in such policies therefor but for which undertaking all members of said bureau shall be reinsurers as among themselves in the amount which the compensation insurance written in this state during the preceding calendar year by such member bears to the total compensation insurance written in this state during the preceding year by all the members of said bureau. (Act Apr. 18, 1929, c. 237, §2.)

3634-3. Bureau to adopt rules.—The bureau shall within thirty days after the approval of this act make and adopt such rules as may be necessary to carry this law into effect, subject to an appeal to the compensation insurance board as in all other cases. (Act Apr. 18, 1929, c. 237, §3.)

3634-4. Insurance companies to come under act.—As a prerequisite to the transaction of workmen's compensation insurance in this state, every insurance carrier shall file with the commissioner of insurance written authority permitting said bureau to act in its behalf, as provided in this act. (Act Apr. 18, 1929, c. 237, §4.)

3634-5. Effective July 1, 1929.—This act shall take effect and be in force on July 1, 1929. (Act Apr. 18, 1929, c. 237, §5.)

3634-6. Liability of insurers.—Carriers of workmen's compensation insurance shall be liable to the extent and in the manner hereafter set forth for the payment of unpaid awards of workmen's compensation arising out of injuries sustained from and after the passage of this Act while the employer was insured by a carrier and such carrier becomes insolvent. Upon the determination by the Insurance Commissioner, or other competent authority of the State where such carrier is incorporated or organized, that any carrier of workmen's compensation insurance, which is or has been engaged in such business in this State, is insolvent, the Industrial Commission shall thereupon and thereafter from time to time certify to the Rating Bureau of Minnesota, as defined in Mason's Minnesota Statutes of 1927, Sections 3622 and 3623, the unpaid awards of workmen's compensation for such injuries outstanding against employers insured by such carrier and as to which it is liable. Said Rating Bureau shall thereupon make payment of such unpaid awards so far as funds are available, at the times, and in the amounts, required by such awards, unless payment in a lesser number of installment is authorized by the Industrial Commission, and if sufficient funds to make all of said payments, due and payable, are not available in any one year, then the available funds shall be prorated to such claims in proportion to the amounts of the awards due and payable in said year, and the unpaid portion thereof shall be paid as soon as funds are available. (Act Apr. 1, 1935, c. 103, §1.)

3634-7. Assessments.—If necessary to secure funds for the payment of such awards it shall be the duty

of said Rating Bureau upon such certification to levy an assessment or assessments on all carriers writing workmen's compensation insurance in the proportion that the workmen's compensation insurance written by each such carrier in the State during the preceding calendar years bears to the total of such insurance written in the State during such year. Said assessments may be made at any time by said Bureau in its discretion for such amount as it estimates will be necessary to meet both past and future awards which will probably become due and payable during the year in which such assessment is levied. Each company assessed shall have at least thirty (30) days' notice by mail as to the date such assessment is due and payable. In no event shall the total sum assessed in any calendar year exceed one (1) per cent of the premiums for workmen's compensation insurance written in this State during the preceding calendar year. Any assessment paid under the provisions of this Act shall be included in determining the loss ratio of such carriers. (Act Apr. 1, 1935, c. 103, §2.)

3634–8. Subrogation upon insolvency.—Said Rating Bureau shall be subrogated to the rights of such employee or his dependents as against the employer and his carrier to the extent of payments made by the Rating Bureau under the provisions hereof, and shall take such legal proceedings as it shall deem necessary or advisable to recover thereon, and all sums so recovered shall constitute an additional fund for payment of such awards until the same are paid in full. (Act Apr. 1, 1935, c. 103, §3.)

3634–9. Rating bureau to be party in interest.—After insolvency of any such carrier the Rating Bureau shall be a party in interest in all workmen's compensation proceedings involving risks insured by such carrier with the same rights to receive notice, defend, appeal, and review as a solvent carrier would have. (Act Apr. 1, 1935, c. 103, §4.)

3634–10. Duties of rating bureau.—Said Bureau may sue for and recover any assessment not paid when due, and any member thereof which shall fail to pay an assessment as provided herein shall be liable to forfeiture and revocation of its license upon complaint made to Commissioner of Insurance by the Bureau. (Act Apr. 1, 1935, c. 103, §5.)

3634–11. Provisions severable.—If any provision hereof is found unconstitutional, such determination shall not affect the validity of the remaining provisions not clearly dependent thereon. (Act Apr. 1, 1935, c. 103, §6.)

FARMERS' MUTUAL COMPANIES

3645. Farmers' mutual fire companies.

Doctrine of estoppel is applicable to mutual companies. 181M8, 231NW401.

TOWNSHIP MUTUAL COMPANIES ORGANIZATION

3646. Township mutual fire insurance companies.—It shall be lawful for any number of persons not less than twenty-five (25) residing in adjoining towns in this State who shall collectively own property worth at least Fifty Thousand Dollars ($50,000.00) to form themselves into a company or corporation for mutual insurance against loss or damage by fire or lightning. No such company shall operate in more than one hundred (100) towns in the aggregate at the same time provided, that when any such company confines its operations to one county it may transact business in the whole thereof by so providing in its certificate of incorporation. ('09, c. 411, §1; G. S. '13, §3383; '15, c. 155, §1; '23, c. 209, §1; Apr. 13, 1931, c. 151; Apr. 24, 1935, c. 269, §1.)

Sec. 2 of Act Apr. 24, 1935, cited, provides that the act shall take effect from its passage.

The title of Act Apr. 24, 1935, cited, purports to amend "Section 3646, Mason's Minnesota Statutes of 1917, as amended by Laws 1931, Chapter 151."

Laws 1931, c. 197, legalizes renewal of corporate existence of township mutual fire insurance companies.

A school district cannot insure in mutual company where there is unlimited liability, but can where there is a fixed, limited liability. Op. Atty. Gen. (487c-5), Dec. 28, 1934.

3649. Powers of such corporation.

Township mutual companies are governed by the statutes specially applicable to them and are not required to issue policies in standard form. 177M509, 225NW445.

Rights of mortgagee on transfer of insured property. 177M509, 225NW445.

Policy held not to have been amended. 177M509, 225 NW445.

Compromise settlement whereby farmers' mutual town insurance company agrees to accept part of claim against county, due to shortage of county funds, is not contrary to insurance laws. Op. Atty. Gen., Jan. 26, 1933.

3649-1. Insurance Companies may enter into agreements for fire protection.—The members of a township mutual fire insurance company may, at any regular, or at any special meeting called for that purpose, authorize its officials or directors to enter into an agreement with any municipal subdivision of the state or with any fire department whereby the fire department of such municipality shall respond to calls in case of fire in territory where the company does business, or respond to calls in case of fire on the premises of a member of such mutual company on such terms and conditions as may be mutually agreed upon. (Act Apr. 5, 1929, c. 139.)

3649–2. Township mutual fire insurance companies may insure grain in sealed containers.—In addition to the powers and privileges now conferred upon them by law, township mutual fire insurance companies organized under the provisions of Chapter 411, Laws 1909, and acts amendatory thereof [§3646 et seq.], are hereby authorized to insure against loss or damage by hail, windstorm, tornado, and cyclone, for their members, corn and other grain while stored in sealed containers in accordance with the regulations of the federal government. (Act Apr. 11, 1935, c. 154.)

3652. Corporate existence not to exceed, etc.

Act to legalize renewal of corporate existence of township mutual fire insurance companies. Laws 1931, c. 197.

3659. What may be insured.—No township mutual fire insurance company heretofore organized and no company organized pursuant to this Act shall insure any property outside of the limits of the town or towns in which such company is authorized by its certificate or articles of incorporation to transact business, except personal property temporarily outside of such authorized territory and, except as hereinafter further provided; nor shall any township mutual fire insurance company insure any property other than dwellings and their contents, farm buildings and their contents, livestock, farm machinery, automobiles, country store buildings, and the household goods therein, threshing machines, farm produce anywhere on the premises, churches, and their contents, school houses, and their contents, society and town halls, and their contents, country blacksmith shops and their contents, parsonages and their contents, and the bonds [sic] and contents used in connection therewith, creameries, cheese factories and their equipment and contents, and respective operators dwelling houses and contents, and barns and contents used in connection therewith, and dwellings together with the usual outbuildings and the usual contents of both said dwellings and outbuildings in any village of 1000 or less inhabitants, and any county poor farm together with contents and such personal property as used in connection therewith and which real property, contents and personal property is situated in such county wherein such Township Mutual Fire Insurance Companies are operating, providing, when at a duly called special or annual meeting of the policy holders it shall be duly decided by them, by a majority vote, to do so.

Otherwise than as hereinbefore provided, no such company shall insure any property within the limits

of any city or village except that located upon lands actually used for farming or gardening purposes, but whenever the dwelling of any person insured is within the limits of a town where the company is authorized to do business, and the farm on which such dwellings are situated is partly within and partly without such town, it may include in such insurance any outbuildings, farm produce, stock or other farm property on such farm outside of such limits; provided, however, any such company is hereby authorized to insure county fair buildings whether the same are situated either within or without the limits of a duly incorporated village or city.

No law relating to insurance companies now in force in this state shall apply to township mutual fire insurance companies unless it shall be expressly designated in such law that it is applicable to such companies. ('09, c. 411, §13; G. S. '13, §3395; '13, c. 80, §3; '15, c. 107, §1; '23, c. 338, §1; Apr. 20, 1931, c. 269; Mar. 3, 1933, c. 52; Apr. 21, 1933, c. 421; Apr. 1, 1935, c. 104.)

Editorial note.

The word "bond" in first paragraph read "barns" previous to amendment of Apr. 1, 1935.

172M122, 214NW926; note under §3512.

Fire insurance policy issued on a barn known by the company to contain an actively operating illegal still is void as against public policy. Vos v. A., 191M197, 253NW 549. See Dun. Dig. 4646a.

County may insure poor farm in township mutual fire insurance company if its liability is limited and within §2070, otherwise not. Op. Atty. Gen., June 1, 1933.

3662. Advance assessments.—The directors of any such company may collect by advance assessments and maintain in its treasury an emergency fund not exceeding five mills on a dollar to the total amount of insurance in force, to be used in payment of losses and for other purposes for which assessments may be used. ('09, c. 411, §16; G. S. '13, §3398; Mar. 16, 1931, c. 63.)

3663. Joint or partial risks permissible.

Insurer did not waive forfeiture of policy as to building on premises through having paid loss on personal property. 176M31, 222NW514.

3665. Classification of property.

Section applies to ordinary mutual fire insurance company. Op. Atty. Gen., June 1, 1933.

3670. All companies to be governed by this act.

72M122, 214NW926; note under §3512.

Township mutual companies are governed by the statutes specially applicable to them and are not required to issue policies in standard form. 177M509, 225NW445.

FARMERS AND TOWSHIP REINSURANCE ASSOCIATIONS

3675. Mutual reinsurance or guarantee associations.—Not less than six duly licensed township mutual fire insurance companies or farmers' mutual fire insurance companies may organize a mutual association for the purpose of reinsuring specific risks in such amounts as shall be fixed by the by-laws of such association and/or for the purpose of reinsuring all risks of the member companies in excess of such amounts as shall be fixed by the by-laws of such association. ('19, Ex. Ses., c. 55, §1; '21, c. 399, §1; Apr. 16, 1931, c. 178, §1.)

3681. Assessments to be paid.—Member companies of any such association shall each year pay to the treasurer thereof such assessments as shall be fixed or authorized by the by-laws of such association, which assessments shall be based upon the amount of insurance of each of its member companies during the calendar year ending December 31st next preceding. The individual members of the member companies shall be subject to assessment in case the funds of the member companies are insufficient to pay any assessment made by the association, to the same extent and in the same manner as though said assessment by the association were to cover a loss by fire for which the member company was liable. ('19, Ex. Ses., c. 55, §7; Apr. 16, 1931, c. 178, §2.)

MUTUAL HAIL, TORNADO AND CYCLONE COMPANIES

3690. Limit of premiums and assessments.

This section requires a minimum premium of 2½ per cent of the amount insured as to hail insurance. Op. Atty. Gen., June 19, 1931.

3691. Notice and payment of assessments—Etc.

Provisions for cancellation of insurance and for notice of payment of assessments apply to all forms of insurance. Op. Atty. Gen., June 19, 1931.

3692. Bonds of officers—duties.—The officers shall perform such duties, receive such compensation, and give such bonds as shall be provided in the by-laws or fixed by the directors; but no salary, past or future, shall be increased except by majority vote of all members present and represented at an annual meeting, and no officer or director shall receive any commission, except upon business personally solicited and written by such officer. (R. L. '05, §1670; G. S. '13, §3416; Apr. 10, 1933, c. 195.)

FIDELITY AND SURETY COMPANIES

3710. Fidelity and surety companies.

Bank held entitled to recover where its employee acted wrongfully or dishonestly and in bad faith, resulting in a money loss. 177M65, 224NW451.

Evidence sustains the finding that notice of loss was given in time to indemnity company, except as to one item. 177M65, 224NW451.

Surety on bond of treasurer of corporation was not liable for loss resulting from failure of the bank in which it was the duty of the treasurer to deposit corporate monies. 175M575, 225NW724.

Under fidelity indemnity bond of employees of bank, actual loss did not occur to bank by reason of wrongful withdrawals by bank employee from an account of a depositor until bank was required to pay on judgment obtained by it against such depositor, as affecting time for notice to surety. Cary v. N., 190M185, 251NW123. See Dun. Dig. 4335.

Surety on fidelity indemnity bond disclaiming all liability could not subsequently take advantage of default in provision of bond requiring notice and filing of claim. Id. See Dun. Dig. 4686, 4789.

When ambiguity exists in terms of a fidelity indemnity bond, it must be construed most favorably to insured. Id. See Dun. Dig. 4336.

Fidelity indemnity bond providing that claim must be presented "within six months after the date of termination of the surety's liability" did not bar recovery for improper acts incurring during time bond was in force. Id.

Offers of proof were properly excluded as directed more against character of employee than to prove any larceny or embezzlement of specific property within allegations of complaint. Farmers' Co-Op. Store of Cleveland v. L., 194M569, 261NW191. See Dun. Dig. 4875q.

Burden was on employer to prove that, during time alleged in complaint, employee converted or misappropriated to his own use money or property of employer. Id.

PROVISIONS REGARDING FOREIGN COMPANIES

3711. Requirements—Certificates.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

Hardware Dealers' M. F. I. Co. v. Glidden Co. 284US 151, 52SCR69, aff'g 181Minn.518, 233NW310; §3512; note 10. 176M143, 222NW901; note under §3713.

(3). In general.

A foreign insurance company whose articles authorize it to write fire and tornado insurance, and also fidelity insurance, may not be licensed to do a fidelity insurance business in this state, although it does not propose to do a fire or tornado business here. State v. Brown, 189M 497, 250NW2. See Dun. Dig. 4723.

3713. Appointment of insurance commissioner attorney for service of summons, etc.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

Service of summons upon the insurance commissioner is not limited to actions which arise out of business transacted in this state or with residents thereof. 176 M143, 222NW901.

Commissioner of insurance should continue to accept processes and notices served upon him, notwithstanding foreign insurance company has been adjudged insolvent or has been taken over by an official of another state for rehabilitation. Op. Atty. Gen. (250a), May 15, 1934.

3716. Deposit to be made with commissioner of insurance.

275US274, 48SCR124, aff'g 169M516, 211NW478; note under §3313.

3721. Retaliatory provisions.
Validity of retaliatory legislation towards foreign insurance companies. 16MinnLawRev433.

3722. Insurance from unlicensed foreign companies.
The Minnesota State High School League, as the representative governing body of all sports and athletics sponsored by its member schools, cannot secure a license provided for by this section. Op. Atty. Gen. (249a-13), Feb. 19, 1935.

FIRE AND POLICE DEPARTMENT AID AND FIREMEN'S AND POLICEMEN'S RELIEF

3723. Clerk to file certificate.—On or before October 31, annually, the clerk of every municipality having an organized fire department, or a partly paid or volunteer department, shall file with the commissioner his certificate stating such fact, the system of water supply in use in such department, the number of its organized companies, steam, hand or other engines, hook and ladder trucks, hose carts, and feet of hose in actual use, and such other facts as the commissioner may require; provided however that such clerk shall include in such certificate the name of each municipality or town served by such fire department under contract. (R. L. '05, §1650; G. S. '13, §3342; Apr. 24, 1935, c. 280, §1.)

3724. Report of premiums—Certificate of Commissioner.—The commissioner shall include in the blank form furnished to each fire insurance company for its annual statement a list of all such municipalities, and towns, and each company shall report therein the amount of the gross direct premiums, less return premiums, received by it on all direct business during the preceding year, upon property located within the corporate limits of such municipalities, and towns, upon policies covering loss or damage by fire, lightning, loss or damage by water to goods and premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires. Before July 1 following, the commissioner shall certify to the state auditor the name of each municipality which has had for not less than one year an organized fire department, and which has been so reported to him, and the amount of said gross direct premiums, less return premiums, upon property located within the corporate limits of such municipality, and upon property located within the corporate limits of such other municipalities and towns as have been certified to the Commissioner as having service contracts with such first mentioned municipality received by each fire company upon policies covering loss or damage by fire, lightning, loss or damage by water to goods and premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and taxes paid on account thereof in such year by each company. (R. L. '05, §1651; G. S. '13, §3343; '19, c. 397, §1; Apr. 24, 1935, c. 280, §2.)

3725. Auditor's warrant.
Loans and investment of the 2% tax imposed by this section are made by the board of trustees of the Firemen's Relief Association after they are approved at a regular meeting by a three-fourths' vote of all members present. Op. Atty. Gen., Apr. 2, 1931.

Funds in hands of firemen's relief association are not public funds to extent that they are a preferred claim against bank and required to be paid over without restrictions or deductions by bank opened after bank holiday. Op. Atty. Gen., June 1, 1933.

3726. Disposition of such funds—Relief Association.—Such amount shall be kept as a special fund, and disbursed only for the following purposes:

(1) For the relief of sick, injured or disabled members of such fire department, their widows and orphans.

(2) For the equipment and maintenance of such department and for construction, acquisition or repair of buildings, rooms and premises for fire department use or otherwise.

(3) For the payment of the fees, dues and assessments in the volunteer firemen's benefit association of Minnesota so as to entitle the members of any fire department to membership in and benefits of such state association.

(4) For the payment of such death or funeral benefits as may be from time to time stipulated in the by-laws of the respective relief associations, for the payment of the secretary's and treasurer's salaries and premium on the treasurer's bond.

(5) Provided that all payments for death or funeral benefits, secretary's and treasurer's salaries and premium on treasurer's bond heretofore made are ratified and in all things confirmed.

Provided, that the treasurer of the association may and shall loan or invest the funds of such association in such properties or securities as shall be directed by the trustees or board of managers of the association, but the said trustees or board of managers shall not have authority to make any such loan or investment until after the same shall be approved at a regular meeting of the members of the association, and by a three-fourths vote of all the members present at said meeting; and, provided further, the treasurer of said association shall not be held responsible for any such use or investment of such funds, under the direction of said trustees or managers, but only for the safe keeping of the securities.

But if there shall be a duly incorporated fire department relief association in such municipality, organized with the consent of the governing body thereof, such amount shall be paid to the treasurer of said relief association, to be disbursed as hereinabove prescribed for municipalities, and as hereinafter provided for service pensions, or relief of sick, injured, or disabled, active or retired members of the fire department in such city, who are members of such relief association. In case any fire department relief association or any trustee having any of said funds in its hands shall resign its trust in relation thereto, or shall be dissolved or shall have been heretofore, or shall be hereafter removed as such trustee, the district court of the proper county may appoint a trustee or trustees of said funds, or cause such trust to be executed by its officer under its direction, or such court may direct that such trust funds be paid to the treasury of the proper municipality, and all funds so held in trust or so paid to any such treasurer shall be kept as a special fund and disbursed only for the purpose provided in this section. (R. L. '05, §1653; '09 c. 237, §1; G. S. '13, §3345; '17, c. 207, §1; '19, c. 326, §1; '27, c. 373; Apr. 11, 1929, c. 165, §1.)

Mechanic who was member of St. Paul Bureau of Fire Protection was entitled to membership in the St. Paul Fire Department Relief Association organized under this section. 175M600, 604, 222NW283, 284.

Proceeds of refund of premiums paid to insurance companies cannot be used to apply on bonded indebtedness of a village, though it is to be replaced at some future time. Op. Atty. Gen., Dec. 21, 1929.

Funds received under these sections, together with interest thereon, may be used for the purchase of fire apparatus. Op. Atty. Gen., Feb. 28, 1930.

Interest received on moneys in special fund cannot be placed in the general fund of the association. Op. Atty. Gen., Feb. 28, 1930.

Village council cannot reimburse firemen's relief association for funds used by it in the purchase of fire apparatus. Op. Atty. Gen., Feb. 28, 1930.

City is without power to pay expenses of delegates from its fire department to state firemen's association convention. Op. Atty. Gen., June 2, 1930.

In order to be entitled to benefits, a man must be a member of the fire department or retired after serving twenty years and having reached the age of 50, and an association has no authority to create "honorary members." Op. Atty. Gen., Jan. 24, 1931.

The funds raised under this section and §1200 should be kept separate so that investment of each could be approved by the proper authority. Op. Atty. Gen., Mar. 12, 1931.

Firemen's relief association may expend money from its special fund for the purchase of fire fighting equipment for a village as far as funds received under section 3726 are concerned, but not from funds arising under section 1919. Op. Atty. Gen., Apr. 21, 1931.

Right to relief from a firemen's relief association does not bar a member thereof from participating in benefits conferred by Laws 1931, c. 307. Op. Atty. Gen., May 23, 1931.

Interest from investments made with moneys received by a firemen's relief association may not be placed in the general fund and expended for purposes for which such fund may be spent. Op. Atty. Gen., July 30, 1931.

By-laws of volunteer fire relief association may provide for benefits to widows and orphans. Op. Atty. Gen., Sept. 25, 1933.

Special fund may not be used for payment of salaries of officers, premium on treasurer's bond, or funeral benefits, but any funds of association which are raised independent of sources indicated by §§3726 and 3728, may be so used if the articles of the association and by-laws so provide. Op. Atty. Gen. (198b-3), Jan. 3, 1935.

City may not limit membership in association to older members of fire department so as to exclude younger members. Op. Atty. Gen. (198a-2), Apr. 3, 1935.

Salaries of officers of association may not be paid out of special fund but may be paid out of general fund derived from dues, fines, etc., and one receiving attention may receive a salary as an officer of association. Op. Atty. Gen. (198a-1), Apr. 4, 1935.

Fireman is entitled to benefit how ever he received his injury. Id.

(2).

Caps for firemen constitute part of equipment of fire department and may be paid for by use of funds for relief of association. Op. Atty. Gen., Oct. 27, 1933.

3728. Service pension.—Every fire department relief association organized under any laws of this state, whenever its certificate of incorporation or by-laws so provide, may pay out of any funds received from the state, or other source, a service pension, in such amount, not exceeding $40.00 per month, as hereinafter authorized, or as may be provided by its by-laws, to each of its members, who have heretofore retired or may hereafter retire, who has reached or shall hereafter reach the age of 50 years, and who has done, or hereafter shall do, active duty for 20 years or more as a member of a volunteer paid, or partially paid and partially volunteer fire department in the municipality where such association exists, and who has been, or shall hereafter be, a member of such fire department relief association at least 10 years prior to such retirement, and who complies with such additional conditions as to age, service, and membership as may be prescribed by the certificate or by-laws of such association.

The amount of monthly pension which may be paid to such retired firemen may be increased by adding to the maximum above prescribed, an amount not exceeding two dollars per month for each year of active duty over 20 years of service before retirement, provided, however, that no such fire department relief association shall pay to any member thereof a pension in any greater amount than the sum of $60.00 per month. Such pensions shall be uniform in amount, except as herein otherwise provided. No such pension shall be paid to any person while he remains a member of the fire department and no person receiving such pension shall be entitled to other relief from such association. No payments made or to be made by said association to any member on the pension roll shall be subject to judgment, garnishment or execution, or other legal process, and no person entitled to such payment shall have the right to assign the same, nor shall the association have the authority to recognize any assignment or pay over any sum which has been assigned. (R. L. '05, §1655; '07, c. 331, §1; G. S. '13, §3347; '17, c. 514, §1; Mar. 28, 1933, c. 124, §1.)

Sec. 2 of Act Mar. 28, 1933, cited, provides that the act shall take effect from its passage.

Pensioner has vested right in pension granted that cannot be taken away without notice and a hearing. Renz v. H., 186M370, 243NW713. See Dun. Dig. 1618.

In order for a fireman to receive a pension from association for disability, he must show that his disability has a casual connection with the service in fire department. Renz v. H., 186M370, 243NW713. See Dun. Dig. 6605a.

One acting as secretary of the fire department and as secretary of the association cannot draw a service pension. Op. Atty. Gen., July 16, 1930.

Volunteer fire department of village could pay one eligible to a pension a lump sum if permitted by by-laws. Op. Atty. Gen., May 22, 1933.

One eligible for pension does not lose unpaid portion by moving out of village. Id.

Association has no legal right to buy insurance in lieu of pensions. Id.

Board of trustees may adopt by-laws increasing or decreasing pensions within limitations provided. Op. Atty. Gen., Jan. 5, 1934.

Member to qualify for pension must qualify both under age requirement as well as length of service requirement. Op. Atty. Gen. (198a-2), Apr. 28, 1935.

Statute does not require that 20 years' service be consecutive. Op. Atty. Gen. (198a-2), Apr. 29, 1935.

By-laws of association may provide for payment of a gross or lump sum to each retired fireman, but pension must be uniform in amount subject to increase or decrease within limits of statute. Id.

Lump sum pension may be paid to widows of firemen if such provision is made in certificate or by-laws of association, but should be limited to funds derived from one-tenth of a mill tax levy. Op. Atty. Gen. (198b-6 (a)), May 9, 1935.

By-laws of fire department relief association may provide for payment of lump sum pensions, uniform in amount. Id.

3728–1. Firemen's relief association in certain cities.—In any city of the third class having an assessed valuation in excess of $12,000,000, and having a fire department relief association organized under the laws of this state, and authorized to pay benefits under Mason's Minnesota Statutes of 1927, Sections 1919, 1920, and 3723 to 3728, inclusive, or any amendments thereof, such fire department relief association may pay retirement pensions in excess of the amounts authorized by such statutes, but not in excess of the following total amounts: $60.00 per month to each of its members who has heretofore retired or may hereafter retire, who has reached or shall hereafter reach the age of 50 years, and who has done or hereafter shall do active duty for 20 years or more as a member of a volunteer, paid or partially paid and partially volunteer fire department in the municipality where such association exists, and who has been or shall hereafter be a member of such fire department relief association at least ten years prior to such retirement, and who complies with such additional conditions as to age, service and membership as may be prescribed by the certificate or by-laws of such association. The amount of monthly pension which may be paid to such retired fireman may be increased by adding to the maximum above described an amount not exceeding two dollars per month for each year of active duty over 20 years of service before retirement; provided, however, that no such fire department relief association shall pay to any member thereof a pension in any greater amount than the sum of $80.00 per month. (Act Apr. 11, 1935, c. 153, §1.)

3728–2. Additional retirement pension—restrictions.—The payment of such additional retirement pensions shall be subject to all the conditions imposed by the statutes heretofore mentioned and by the certificate or by-laws of such association. (Apr. 11, 1935, c. 153, §2.)

3737 to 3744 [Repealed].

Repealed by Act Apr. 8, 1933, c. 177, §29, post §3750-29.

3741.

Act Jan. 9, 1934, Ex. Ses., c. 79, authorizes state executive council, for a period of one year, to appropriate money to supply deficiencies in special fund. It is omitted as temporary.

Right of fire relief association in village of Hibbing to relief, discussed. Op. Atty. Gen., Mar. 3, 1934.

3748 to 3750 [Repealed].

Repealed by Act Apr. 8, 1933, c. 177, §29, post §3750-29.

3748.

Op. Atty. Gen. (335d), Aug. 22, 1934; note under §1358.

Resignation of fireman filed with fire department and civil service commission terminated right to pension, and withdrawal after death of copy filed with civil service commission was not reinstatement. 180M157, 230NW633.

3749.

A widow of a member of fire department relief association, recipient of a pension under its constitution and by-laws, terminated her right to such pension by a marriage and is not entitled to reinstatement as a pensioner upon such marriage being annulled by a judgment of a court of competent jurisdiction. Northrup v. S., 193M623, 259NW185. See Dun. Dig. 6605a.

3750-1. Firemen's relief associations in cities of first class established.—The fire departments of each city of the first class in this state shall maintain a firemen's relief association which shall be duly incorporated under the laws of the State of Minnesota. All such associations now existing as such corporations, or hereafter incorporated under the laws of this state, shall have perpetual corporate existence. (Act Apr. 8, 1933, c. 177, §1.)

3750-2. Relief associations to be self governing.—Each relief association shall be organized, operated and maintained in accordance with its own articles of incorporation and by-laws, by firemen, as hereinafter defined, who are members of said fire departments. Each such association shall have power to regulate its own management and its own affairs, and all additional corporate powers which may be necessary or useful; subject, however, to the regulations and restrictions of this Act, and other laws of this state pertaining to corporations, not inconsistent herewith. (Act Apr. 8, 1933, c. 177, §2.)

3750-3. Members.—A fireman under this Act is one who is regularly entered on the payroll of one of said fire departments, serving on active duty with a designated fire company therein, or having charge of one or more of said companies and engaged in the hazards of fire fighting; and shall include all members of the electrical and mechanical divisions of such fire departments who are subject to like hazards. Substitutes and persons employed irregularly from time to time shall not be included.

All persons who are members of such relief associations at the time of the passage of this Act, whether their status is embraced within the definition of a fireman herein contained or otherwise, shall have the right to continue as members of their respective associations and be entitled to all benefits pertaining thereto, and any member included under the definition of firemen herein provided shall have the right to retain his membership on promotion or appointment to other positions to which such fireman may be subject.

This Act shall not affect any pensions or other benefits which have been allowed or which are being paid by any such relief association under or in accordance with any prior Act or Acts, at the time this Act becomes effective. Payment of such pensions and benefits shall be continued by the respective associations, and shall be subject only to the provisions of Section 18 of this Act. (Act Apr. 8, 1933, c. 177, §3.)

3750-4 Eligibility.—Every fireman as herein defined shall be eligible to apply for membership in the relief association in the city in which he is employed within the time and in the manner hereinafter set forth. Any such fireman desiring to become such member shall, not later than 90 days from the time when he is regularly entered on the payrolls of such fire department, make written application for membership in such relief association on forms supplied by such association, accompanied by one or more physician's certificates as required by the by-laws of said association. After such application has been filed, the board of examiners of the association shall make a thorough investigation thereof and file their report with the secretary of the association. Such application must be acted upon by the association within six months from the date applicant was entered on the payroll of the fire department. Provided, however, that no fireman who is more than 35 years of age when his application is filed can become a member of the relief association, except that such age limitation of 35 years shall not apply on application for reinstatement in such association. (Act Apr. 8, 1933, c. 177, §4.)

3750-5. Associations may reject unfit persons.—Each firemen's relief association shall have the right to exclude all applicants for membership who are not physically and mentally sound, so as to prevent unwarranted risks for the association; and additional requirements for entrance fees and annual dues for membership in the association may from time to time be prescribed in the by-laws of such association. (Act Apr. 8, 1933, c. 177, §5.)

3750-6. Officers—duties—bonds.—The officers of such relief association shall be a president, one or more vice-presidents, a secretary and a treasurer. The officers of assistant secretary and assistant treasurer may be created by the by-laws of any such association. The affairs of each association shall be managed by a board of trustees elected in the manner prescribed by the articles of incorporation of said association.

The secretary and the treasurer of each such relief association shall each furnish a corporate bond to the association for the faithful performance of their duties, in such amounts as the association from time to time may determine. Each relief association shall and is hereby authorized to pay the premiums on such bonds from its general fund. (Act Apr. 8, 1933, c. 177, §6.)

3750-7. Reports of officers.—The secretary and treasurer of every such association, prior to the 1st day of February in each year, shall jointly prepare and sign with the approval of the association's board of trustees, a detailed and itemized report of all receipts and expenditures in the association's special fund for the preceding calendar year, showing the source of said receipts, and to whom and for what purpose said moneys have been paid and expended, and the balance in said fund. They shall file duplicate original copies thereof with the clerk of the city in which the association is located, and with the Auditor of the State of Minnesota. No money shall be paid to a relief association by either the State of Minnesota or the city in which such association is located until such report is so filed. (Act Apr. 8, 1933, c. 177, §7.)

3750-8. City clerk to file report with the insurance commissioner.—The clerk of every city of the first class having a firemen's relief association shall, on or before the 31st day of October in each year, make and file with the Insurance Commissioner of this state his certificate stating the existence of such firemen's relief association. (Act Apr. 8, 1933, c. 177, §8.)

3750-9. Insurance commissioner to report names of associations to insurance companies.—The Insurance Commissioner shall enclose in his annual statement blank sent by him to all fire insurance companies doing business in this state, a blank form containing the names of all firemen's relief associations in all cities of the first class and the names of said cities, and shall require said companies at the time of making their annual statements to said Insurance Commissioner to state on said blanks the amount of premiums received by them upon properties insured within the corporate limits of the cities named thereon during the year ending December 31st last past. Thereafter, and before July 1st in each year the Insurance Commissioner shall certify to the state auditor the information thus obtained, together with the amount of the tax for the benefit of such relief association paid in such year by said companies upon such insurance premiums. (Act Apr. 8, 1933, c. 177, §9.)

3750-10. State Auditor to distribute monies.—The State Auditor of this state at the end of each fiscal year shall issue and deliver to the treasurer of each such relief association his warrant upon the State Treasurer of this state for an amount equal to the total amount of the tax, for the benefit of such relief associations, paid by fire insurance companies upon

the premiums by said companies received in the city upon properties insured within the corporate limits thereof in which said association is located, together with such other appropriations or funds as may hereafter be appropriated or created, and to which said association is entitled. (Act Apr. 8, 1933, c. 177, §10.)

3750-11. Payments to be made from general revenue fund.—The State Treasurer shall, upon presentation to him of the warrant of the State Auditor specified in the foregoing section, pay out of the general revenue fund of the state the amount thereof to the treasurer of such relief association presenting the warrant. (Act Apr. 8, 1933, c. 177, §11.)

3750–12. Tax levy for firemen's relief associations.—The city council or other governing body of each city wherein such a relief association is located shall each year, at the time the tax levies for the support of the city are made, and in addition thereto, levy a tax of three-tenths of one mill on all taxable property within said city. Provided, however, that in the event the balance in said relief association's special fund, at the time said levy is made, is less than $300,000.00, as determined by said association's board of trustees, then it shall be the duty of said city's governing body to increase the rate of said tax levy herein provided for from three-tenths of one mill to five-tenths of one mill. The tax so levied shall be transmitted with other tax levies to the auditor of the county in which such city is situated, and by said county shall be collected and payment thereof enforced when and in like manner as state and county taxes are paid. (Act Apr. 8, 1933, c. 177, §12; Apr. 1, 1935, c. 87.)

3750-13. County Treasurer to pay over monies collected.—As soon as practical after the first days of June and November in each year, the county treasurer of each such county shall pay to the treasurer of each relief association within said county the amount of such tax then collected, and payable to said association together with all interest and penalties so collected, and all interest paid thereon between the time of collection and the time of payment to such relief association. And the city treasurer of such city, in the event that such tax or any part thereof is paid to him, shall likewise pay the same to the treasurer of the relief association in said city as soon as the same has been collected, together with all interest and penalties collected thereon. (Act Apr. 8, 1933, c. 177, §13.)

3750-14. Associations to manage funds.—Each relief association shall have full and permanent charge of, and the responsibility for the proper management and control of all funds that may come into its possession, and particularly funds derived from the following sources:

(a) Funds derived from the State of Minnesota, and interest from the investment thereof.

(b) Funds derived from tax levies by the city in which such relief association is located, and interest from the investment thereof.

(c) Funds derived from private sources such as gifts, charges, rents, entertainments, dues paid by members, and from other sources. (Act Apr. 8, 1933, c. 177, §14.)

3750-15. To be kept in separate fund.—The money received from the various sources shall be kept in two separate and distinct funds, one to be designated as the Association Special Fund, and the other as its General Fund. All money received from the State of Minnesota and from the city in which the relief association is located shall be deposited in the special fund, and shall be expended only for purposes hereinafter authorized. All money received from other sources shall be deposited in the general fund, and may be expended for any purpose deemed proper by such association. (Act Apr. 8, 1933, c. 177, §15.)

3750-16. Payments.—The amounts so paid to such relief association by the state and each city under the provisions of this Act, and by it set aside and deposited as a special fund, shall be appropriated and disbursed by each such association for the following purposes, to-wit:

(a) For the relief of sick, injured and disabled members of the relief associations, their widows and orphans.

(b) For the payment of disability and service pensions to members of such relief associations. (Act Apr. 8, 1933, c. 177, §16.)

3750-17. Associations may define sickness and disability.—Each such relief association shall in its by-laws define the sickness and disability entitling its members to relief, and specify the amounts thereof, and also specify the amounts to be paid to its disability and service pensioners, and to widows and children of deceased members, and to fix the age limit of children to which pensions may be paid. When the total assets of such association shall amount of $300,000.00 or more, it shall have the right to pay to its members the maximum amounts specified in this Act. (Act Apr. 8, 1933, c. 177, §17.)

3750-18. Associations may reduce pensions.—Such firemen's relief association shall at all times have and retain the right to reduce the amount of pensions and benefits paid out of its funds, and to reduce and otherwise adjust the amounts of said pensions and benefits to be thereafter paid out of its funds, whenever its total funds, as determined by its board of trustees, are less than $300,000.00; and within the limits of this Act described, said associations shall have and retain the right to increase or otherwise adjust said pensions and benefits after same have been so reduced. (Act Apr. 8, 1933, c. 177, §18.).

3750-19. Persons entitled to relief.—A member of such association who, by reason of sickness or accident, becomes disabled from performing his assignment of duties on the fire department, shall be entitled to such relief as the by-laws of the association may provide.

No allowances for such disabilities shall be made unless notice of such disability and application for benefits on account thereof shall be made by or on behalf of the disabled member to the secretary of the association within thirty days after the beginning of such disability. (Act Apr. 8, 1933, c. 177, §19.)

3750-20. Amount of payments.—A member of any such relief association entitled to disability benefits as herein defined, shall receive the same from his association for such periods of time, at such times, and in such amounts, not to exceed $75.00 per month, as the by-laws of said association provide. (Act Apr. 8, 1933, c. 177, §20.)

3750-21. Retirement pay.—A member of such association as herein defined who has completed a period, or periods of service on the fire department equal to 20 years or more, shall, after he has arrived at the age of 50 years or more, and has retired from the payroll of the fire department, be entitled to a basic pension of not less than $50.00 and not more than $65.00 per month for his natural life in conformity to the by-laws of each association. Any and all leaves of absence of more than 90 days, except such as are granted to a member because of his disability due to sickness or accident, shall be excluded in computing said period of service; and all periods of time during which a member received a disability pension shall be excluded in such computation. No deductions shall be made for a leave of absence granted to a member to enable him to accept an appointive position in said fire department. No member shall be entitled to draw both a disability and a service pension.

Such monthly basic payments may be increased by adding to said basic pension as follows:

(a) The sum of $2.80 per month for each year of active duty over 20 and not more than 25 years.

(b) The sum of $3.20 per month for each year of active duty over 25 and not more than 30 years.

(c) The sum of $3.60 per month for each year of active service over 30 and not more than 35 years.

The by-laws of each association may provide for said increases or any portion thereof, provided that in no event shall the total pension exceed the sum of $98.00 per month. (Act Apr. 8, 1933, c. 177, §21.)

3750-22. Member may be on deferred pension list.—A member of such association who has performed service on the fire department for 20 years or more, but has not reached the age of 50 years, shall have the right to retire from the department without forfeiting his right to a service pension. He shall, upon application, be placed on the deferred pension roll of the association, and, after he has reached the age of 50 years, the association shall upon his application therefor pay his pension from the date such application is approved by said association. Any person making such application thereby waives all other rights, claims or demands against his association for any cause that may have arisen from, or that may be attributable to, his service on the fire department. (Act Apr. 8, 1933, c. 177, §22.)

3750-23. War service to be included in period of service.—Any applicant for a service pension who subsequent to his entry into the service of such fire department has served in the military forces of the United States in the World War, or having during said war entered the employment of the government of the United States and in such service rendered fire prevention service during said war, and has returned after his honorable discharge from such service and resumed active duty in said fire department, the period of his absence in such service of the United States shall not be deducted in computing the period of service hereinbefore provided for, but shall be construed and counted as a part and portion of his active duty in said fire department. (Act Apr. 8, 1933, c. 177, §23.)

3750-24. Pensions to widows and children of members.—When a service pensioner, disability pensioner, or deferred pensioner, or an active member of such relief association dies, leaving

(a) A widow who was his legally married wife, residing with him, and who was married to him while or prior to the time he was on the payroll of the fire department; and who, in case the deceased member was a service or deferred pensioner, was legally married to said member at least three years before his retirement from said fire department; or

(b) A child or children who were living while the deceased was on the payroll of the fire department, or who were born within nine months after said decedent was withdrawn from the payroll of said fire department, such widow and said child or children shall be entitled to a pension or pensions as follows:

(1) To such widow a pension of not less than $25.00 and not to exceed the sum of $50.00 per month, as the by-laws of said association provide, for her natural life; provided, however, that if she shall remarry, then such pension shall cease and terminate as of the date of her said remarriage.

(2) To such child or children, if their mother be living, a pension of not to exceed $15.00 per month for each child up to the time each child reaches the age of not less than 16 years and not to exceed an age of 18 years, in conformity with the by-laws of each association. Provided, the total pensions hereunder for the widow and/or children of said deceased member shall not exceed the sum of $95.00 per month.

(3) A child or children of a deceased member receiving a pension or pensions hereunder shall after the death of their mother, be entitled to receive a pension or pensions in such amount or amounts as the board of trustees of such association shall deem necessary to properly support such child or children until they reach the age of not less than 16 and not more than 18 years, as the by-laws of each association may provide; but the total amount of such pension or pensions hereunder for any such child or children shall not exceed the sum of $95.00 per month. (Act Apr. 8, 1933, c. 177, §24.)

3750-25. Board of Examiners.—Such relief association shall establish a board of examiners, who shall, as and when requested by the association's board of trustees, make a thorough investigation of and report on all applications for membership in the association; investigate and make report on all applications for disability pension and make recommendations as to amount to be paid to such applicant; investigate and make report on all disability pensioners, and make recommendations as to amount of pension to be paid to them from year to year; and investigate and report on all applications for service pensions, and claims for relief. Such board shall consist of a competent physician selected by the association, and at least three members of such relief association on active duty with the fire department. (Act Apr. 8, 1933, c. 177, §25.)

3750-26. Public Examiner to examine books.—The Public Examiner of this state shall each year examine the books and accounts of the secretary and the treasurer of each such relief association. If he finds that any money has been expended for purposes not authorized by this Act, he shall report the same to the Governor, who shall thereupon direct the State Auditor not to issue any further warrents to such association until the public examiner shall report that money unlawfully expended has been replaced. The Governor may also take such further action as the emergency may demand. (Act Apr. 8, 1933, c. 177, §26.)

3750-27. Payments exempt from garnishment.—All payments made or to be made by any relief associations under any of the provisions of this Act shall be totally exempt from garnishment, execution or other legal process, and no persons entitled to such payment shall have the right to assign the same, nor shall the association have authority to recognize any assignment, or to pay any sum on account thereof; and any attempt to transfer any such right or claim or any part thereof shall be void. (Act Apr. 8, 1933, c. 177, §27.)

3750-28. Not to affect workmen's compensation act.—This Act shall not be construed as abridging, repealing or amending the laws of this state relating to the provisions of the law commonly known as the Workmen's Compensation Act. (Act Apr. 8, 1933, c. 177, §28.)

3750-29. Inconsistent acts repealed.—All laws and enactments of this state inconsistent herewith, or conflicting with the provisions of this Act, and all prior laws of this state relating to firemen's relief associations in cities of the first class, the rights and obligations of the members thereof, and the use and control of the funds received by such associations, are hereby in all things repealed; except as hereinbefore provided in section numbered 3 of this Act. (Act Apr. 8, 1933, c. 177, §29.)

3750-30. Provisions separable.—If any section or portion of a section of this Act is declared invalid, the rest of this Act shall nevertheless be and remain in full force and effect. (Act Apr. 8, 1933, c. 177, §30.)

3750-31. Surcharge on premiums to restore deficiency in special fund.—Whenever the balance in the special fund of any Firemen's Relief Association

in any city of the first class is less than $300,000.00, as determined by any such association's board of trustees, which fact shall be duly certified to by the State Comptroller, such board of trustees may thereupon file its duly verified petition for relief, accompanied by such certificate, with the Commissioner of Insurance. The Commissioner of Insurance shall thereupon order and direct a surcharge to be collected of two per cent of the fire, lightning and sprinkler leakage gross premiums, less return premiums, on all direct business received by any foreign or domestic fire insurance company on property in such city of the first class, or by its agents for it, in cash or otherwise, until the balance in the special fund of such relief association amounts to $300,000.00 and for a period of 15 days thereafter. As soon as the balance in said special fund amounts to $300,000.00 the board of trustees of such relief association shall certify that fact to the Commissioner of Insurance and the Commissioner of Insurance shall forthwith issue his order ordering and directing that the collection of such surcharge shall be discontinued after the expiration of said 15 day period and shall forthwith mail a copy of the order last mentioned to each insurance company affected thereby. Said surcharge shall be due and payable from such companies to the State Treasurer in semi-annual installments on June 30th and December 31st of each calendar year, and if not paid within 30 days after such dates a penalty of ten per cent shall accrue thereon and thereafter such sum and penalty shall draw interest at the rate of one per cent per month until paid. (Act Jan. 6, 1934, Ex. Ses., c. 53, §1; Apr. 1, 1935, c. 86, §1.)

Gross premium surcharge is construed as a surcharge and not as a direct tax. Op. Atty. Gen. (252m), Apr. 20, 1934.

Gross premium surcharge on insurance premium on policy held by University of Minnesota construed as a surcharge and not as a direct tax. Op. Atty. Gen. (252m), June 26, 1934.

Surcharge applies in cases where county is purchaser of fire insurance covering its property in the city of Minneapolis. Op. Atty. Gen. (252m), Aug. 16, 1934.

3750-32. Same—Warrant on state treasurer.—The State Auditor of this state on July 31, 1934, and semi-annually thereafter, shall issue and deliver to the treasurer of such relief association in such city his warrant upon the State Treasurer for an amount equal to the total amount of said surcharge on said premiums within such city theretofore so collected and transmitted to the State Treasurer by such insurance companies. There is hereby appropriated out of any moneys in the general revenue fund in the State Treasury not otherwise appropriated such sums as may from time to time be necessary to pay such warrants. (Act Jan. 6, 1934, Ex. Ses., c. 53, §2; Apr. 1, 1935, c. 86, §2.)

3750-33. Same—State treasurer to pay warrant.—The State Treasurer shall, upon presentation to him of the warrant of the State Auditor specified in the foregoing section, pay out of the general revenue fund of the state the amount thereof to the treasurer of such relief association presenting the warrant. The treasurer of such relief association shall place the money received by him in payment of any such warrant in the special fund of such relief association. (Act Jan. 6, 1935, Ex. Ses., c. 53, §3; Apr. 1, 1935, c. 86, §3.)

3750-34. Same—Emergency declared.—An emergency exists and this Act shall be construed as a relief measure for firemen's relief associations in any city of the first class. (Act Jan. 6, 1934, Ex. Ses., c. 53, §4.)

3750-35. Dues imposed on owners insuring in unauthorized companies—statement—penalty for failure to furnish.—The owner of any property situated in any municipality having an organized fire department, or a partly paid or volunteer department, shall upon demand of the Commissioner of Insurance furnish to such Commissioner a statement, verified by affidavit, showing the description and location of the property, the amount of insurance he has effected against loss or damage by fire, the number of the policy or policies, the name and location of the company or companies issuing such policy or policies, and the premiums paid; or, if he has not insured his property, the amount paid into or credited to any insurance fund or other reserve against loss or damage by fire. If any such statement shall not be furnished as above required, said Commissioner shall cause a demand in writing to be served on the Company, Corporation, Association, individual or individuals so failing to furnish such sworn statement. Every such Company, Corporation, Association, individual or individuals, who shall willfully make a false statement, or who shall for thirty days after such demand, neglect to render such statement, shall forfeit Fifty Dollars ($50) to the State and an additional Fifty Dollars ($50) for each day's neglect after the expiration of said thirty days. (Act Jan. 9, 1934, Ex. Sess., c. 56, §1.)

3750-36. Same—collection of percentage on premium—recovery.—If such statement discloses that such insurance has been effected in any company not authorized to do business in this state, or that such owner carried his own insurance, the Commissioner shall, and he is hereby authorized and empowered, to collect from such property owner an amount equal to two (2) per centum of the annual premium which authorized insurance companies would have charged for insuring such property. Such per centum may be recovered in a civil action brought in the name of the State. (Act Jan. 9, 1934, Ex. Sess., c. 56, §2.)

3750-37. Same—disposition of proceeds.—All sums collected under the terms of this Act shall be payable to the respective municipalities in the manner set forth in Section 3724-3725, Mason's Minnesota Statutes of 1927, and shall be disbursed only for the purpose set forth in Section 3726, Mason's Minnesota Statutes of 1927. (Act Jan. 9, 1934, Ex. Sess., c. 56, §3.)

3750-38. Same—exempt property.—This Act shall not apply to property owned and occupied exclusively as a homestead nor to exempt property specified in Section 9447, Mason's Minnesota Statutes of 1927 and upon which homestead or exempt property the owner carries his own insurance. (Act Jan. 9, 1934, Ex. Sess., c. 56, §4.)

PENALTIES

3757. When agent of insurer, etc.

Agent of insurer cannot bind his principal by agreement that premium shall be applied in payment of his personal debt. 179M545, 229NW879.

A policy of life insurance became effective, whether delivered or not, as of the date of the application if the first premium was paid in cash. Lueck v. N., 185M184, 240NW363. See Dun. Dig. 4655.

State supreme court's decision that a soliciting agent of an insurance company has authority to accept promissory note of insured in payment of ordinary premium, held binding on federal court. Braman v. M., (USCCA8), 73F(2d)391. See Dun. Dig. 161.

3762. *Violations of chapter.*

An agreement to attend to communication with relatives or friends of automobile owner in an emergency, to furnish bail bonds, and to defend in civil or criminal litigation, furnish tow service and roadside repairs and mechanical advice, constituted an insurance contract though there was no agreement to answer for any judgment resulting from litigation. State v. Bean, 193M199, 258NW18. See Dun. Dig. 4640.

3766. Rebate on insurance contracts prohibited.

Life insurance cannot be combined with a subscription for stock on the installment plan. Op. Atty. Gen., Dec. 17, 1931.