

1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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3976-83. Definitions.—(a) The term "person", as used in this Act, means any individual, firm, corporation, partnership, association, trustee, receiver or assignee for the benefit of creditors.

(b) The terms "sell", "sold", "buy", and "purchase", as used in this Act, include exchange, barter, gift, and offer of contract to sell or buy. (Apr. 24, 1937, c. 412, §13.)

3976-84. Automobile dealers' anti-coercion act.—This Act shall be known and shall be cited as "Automobile Dealers' Anti-coercion Act." (Apr. 24, 1937, c. 412, §14.)

3976-85. Provisions severable.—If any section, subsection, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Act. The Legislature hereby declares that it would have passed this Act, and each section, subsection, sentence, clause and phrase thereof irrespective of the fact that any one or more other sections, subsections, sentences, clauses or phrases be declared unconstitutional. (Apr. 24, 1937, c. 412, §15.)

Sec. 16 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

CHAPTER 21B

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

3977-3980. [Repealed, except as to pending proceedings.]

For purposes of limitation cause of action based on violation of §§3977 to 4000 accrued when the sale was made. *Burzinski v. K.*, 192M335, 256NW233. See Dun. Dig. 1125a, 5605.

Where mortgage note in which participation certificate was issued was secured by a real estate mortgage and was not for more than 70% of the fair value of property mortgaged, act did not apply. *Id.* See Dun. Dig. 1125a. Annotations under §3980.

Where a purchaser of stock from corporation which has not complied with the Blue Sky Law may recover the money paid, he cannot defend a suit brought by the receiver of the corporation to enforce the stockholders' liability, and it is immaterial that a certificate of stock has not been issued to him. 181M327, 232NW523. See Dun. Dig. 2061.

3982 to 3996. [Repealed, except as to pending proceedings.]

Annotations under §3985.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

Annotations under §3991.

2 (9).

A co-operative association which is authorized by its articles to sell stock to "any co-operative" is not exempt from provisions of securities' act relating to registration of stock. *Op. Atty. Gen.*, Dec. 8, 1933.

Annotations under §3994.

Where license is to sell stock for cash a note given for the price is invalid. *Simerman v. K.*, 179M246, 228NW 757.

3996-1. Definitions.—

(4) "Broker" shall mean and include every person who engages, or professes to engage, either for all or part of his time, directly or through an agent, in the business of accepting and executing buy and sell orders for securities of which he is not the issuer, or owner. (As amended Apr. 22, 1933, c. 408, §1.)

(6) "Agent" shall mean and include every person, other than a broker or dealer employed, appointed, or authorized, by an issuer, dealer or broker to sell securities. The term "agent" shall not include the partners of a partnership or officers of a corporation or association licensed as a broker, or dealer, or for whom securities are registered; provided that the term "officers" as used in this paragraph shall not include the directors of a corporation. (As amended Apr. 22, 1933, c. 408, §2.)

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

self or for another. (Added by Act Apr. 22, 1933, c. 408, §3.)

Act Apr. 22, 1933, c. 408, §1, amends the title of Laws 1927, c. 66, to read as follows: An Act to Protect Investors (as hereinafter defined) by Regulating Sales and Purchases and Attempted Sales and Purchases within the State of Minnesota, of Stocks, Bonds, Notes, Debentures, Commercial Paper, Evidences of Indebtedness, Investment Contracts, Interests in or under Profit Sharing or Participating Agreements or Schemes, and Interests in Trusts or Pretended Trusts; all hereinafter called Securities; by defining Words, Phrases, and Terms used in this Act; by fixing the Scope of the Regulation in this Act provided and prescribing the Conditions under which Securities may be sold, bartered, or exchanged or offered therefor; by providing for enforcement of this Act through Public Agencies and otherwise; by providing for Receivership of Assets of Persons selling Securities; by providing for the services of the Bureau of Criminal Apprehension in connection with Enforcement of this Act and prescribing its Duties in relation thereto; by providing for Advancement upon the Court Calendar of certain cases arising under this Act; by defining and prohibiting Schemes or Artifices to Defraud in connection with the Sale of Securities within the State of Minnesota; And by prescribing and imposing Penalties for Violation of or Non-compliance with this Act.

The title to Laws 1933, c. 408, is as follows: "An act to amend the title of Chapter 66, Laws of 1927, and Mason's Minnesota Statutes of 1927, section 3996-1, subdivisions (4) and (6), section 3996-2, as amended by Laws 1931, chapter 404, section 3996-3, subdivisions (5) and (7), section 3996-5, section 3996-6, section 3996-7, section 3996-9, section 3996-10, section 3996-11, section 3996-15, section 3996-17, and section 3996-19, relating to the regulation of sales and purchases, and attempted sales and purchases, within the State of Minnesota of stocks, bonds, notes and other securities and agreements."

Some of the parts of the act amended are not included in this enumeration.

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

This act is constitutional, and it is not invalid on the ground that its subject is not expressed in its title. *Northwest Bancorporation v. B.* (USDC-Minn), 6FSupp 704; aff'd 292US606, 54SCR775, 54SCR720. See Dun. Dig. 8920.

The fundamental purpose of the Blue Sky Law is to prevent fraud. *Shepard v. C.* (DC-Minn), 24FSupp682.

Title of this act satisfies requirement of Const., Art. 4, §27, 171M191, 213NW904.

Chapter applies to sales of securities by the owner thereof as well as to sales by his representatives. 171 M191, 213NW904.

The act [§§3996-1 to 3996-28] is within the regulatory power of the legislature. 172M277, 215NW177.

Contract evidencing a sale of an interest in an invention was a "security," and not being registered, the sale was unlawful. 172M277, 215NW177.

Purpose of blue sky law is to prevent fraud in sale and disposition of securities within state. *Zochrison v. R.*, 200M383, 274NW536. See Dun. Dig. 1125a.

A mere land contract or conveyance is not within law even though a number of parties join in venture by purchase of undivided interests and later form a corporation to hold the land, but if purchase of undivided interests in land is only incident to right to a beneficial interest in profits to be derived from an enterprise carried on upon whole tract, then sale of interest is investment within law. *Busch v. N.*, 202M290, 278NW34. See Dun. Dig. 1125a.

Where corporation amended its articles of incorporation so as to reduce par value of stock from \$100 per

share to \$10 per share, and issued to its stockholders certificates for 10 shares of new stock in place of each share of \$100 par value of old stock, this was not a sale of shares of new stock and did not come within law requiring registration of stock. *Mertz v. H.*, 294M636, 261NW472. See *Dun. Dig.* 1125a.

Grain marketing service which counsels subscribers as to trend of grain market is not a security and broker's license is unnecessary. *Op. Atty. Gen.*, Apr. 28, 1933.

Grain marketing service which does not execute, buy and sell orders, but trades through regular licensed brokers, does not need broker's license. *Id.*

Partnership in a stallion does not have to be registered as a security. *Op. Atty. Gen.*, July 11, 1933.

In view of Laws 1937, c. 145, §1, warehouse receipts for liquor are securities under this act. *Op. Atty. Gen.* (2183-18), Apr. 26, 1937.

Where country club desiring to purchase leased land for a golf course incorporated and sold stock solely to members of club, registration was unnecessary. *Op. Atty. Gen.* (616b-4), July 20, 1938.

(2).
Where broker licensed to do business in Minnesota solicited prospective buyers in Minnesota and delivered the securities in Minnesota, after confirmation of sale by its Chicago office, the sales were Minnesota contracts to which Minnesota law applied. *Stern v. N.*, (DC-Minn), 25FSupp948.

Plan whereby maturity date of both principal and interest of a mortgage indebtedness is extended and reduction in rate of interest effected and conveyance of easement as additional security held to amount to sale of any security by way of an exchange. *Op. Atty. Gen.*, Oct. 16, 1933.

Transaction whereby bondholder deposits bonds with a bondholders' protective committee, pursuant to which bondholder sells all interest so that committee may in its discretion return bond or pro rata share of any security or property received in exchange, is a sale by way of exchange. *Op. Atty. Gen.*, Nov. 9, 1933.

Transfer of stock of a corporation for stock of another corporation organized to take over stock of former corporation and issue its stock in payment therefor, constitutes a sale requiring registration. *Op. Atty. Gen.* (616b), Dec. 2, 1938.

(3).
Capital stock of national city bank of New York sold together with a proportionate beneficial interest in the capital stock of another New York corporation was subject to registration. *Shepard v. C.*, (DC-Minn), 24FSupp 682.

Contracts for sale of portions of land to be used as a vineyard, with agreement of seller to cultivate and divide net proceeds are "contracts for investments in a profit sharing scheme." 171M191, 213NW904.

The provision excluding from the act isolated sales not made in the course of repeated and successive sales is not void for indefiniteness. 172M277, 215NW177.

An instrument evidencing a contribution to assist in bringing to completion a metallurgical discovery, held a "security," though it may lack the degree of definition and certainty to make it a contract. 178M492, 227NW 652.

Fur farm contracts relating to profit sharing in raising muskrats held "securities." *State v. Robbins*, 185M 202, 240NW456. See *Dun. Dig.* 1125a(81).

Sale of undivided interest in property and lease back for three years with rent payable in merchandise is not a security. *Op. Atty. Gen.*, Mar. 14, 1929.

Ranching contract and bill of sale of certain number of marked ewes and forty per cent of increase to be delivered to purchaser at end of contract, was not a security. *Op. Atty. Gen.*, May 9, 1929.

Subscription agreement for membership in co-operative association engaging in business of distributing petroleum and products, held an "investment contract" and also a "profit sharing or participating agreement scheme" and therefore a security which must be registered. *Op. Atty. Gen.*, Jan. 23, 1933.

Warehouse receipt is not a security. *Op. Atty. Gen.*, Mar. 16, 1934.

"Contract for trading service" held to constitute an "investment contract." *Op. Atty. Gen.* (616a-5), Jan. 6, 1936.

Trust certificate covering a mortgage issued by federal housing administration and partially guaranteed by government, is a security and not exempt from registration. *Op. Atty. Gen.* (92b-13), Aug. 7, 1936.

Right of optional purchase of stock in endowment policy does not offend §3766, but does have effect of making policy a "security" within §3996-1(3) and writing of insurance a "sale" within §3996-4, requiring registration and license from commerce commission. *Op. Atty. Gen.* (249a-17), Mar. 19, 1937.

There is no fixed and rigid rule by which to determine whether that which is offered would be a "security" within the meaning of this act. *Op. Atty. Gen.* (616a-5), June 1, 1937.

Where company owning merchandise vending machines sells them to the public generally, and simultaneously or shortly thereafter purchaser enters into a lease with another company which locates stock, services and operates machines, giving purchaser 20% of deposits taken from machine as a rental, bill of sale and lease con-

stitutes a "security" or an "profit-sharing or participating agreement or scheme" which must be registered. *Op. Atty. Gen.* (616d-26), Sept. 27, 1937.

Agreement by licensed dealer for deposit of certain funds with stock exchange house in name of investor and appointing exclusive agent to trade account on margin basis upon payment of initial fee and a percentage of net profits constitutes an investment contract. *Op. Atty. Gen.* (616a-5), Apr. 26, 1938.

"Joint Fund Agreement", pursuant to which people are solicited generally and contribute 90% of capital and solicitor agrees to contribute 10% thereof, to be invested in securities and commodities for profit, must be registered. *Op. Atty. Gen.* (616d-15), Aug. 25, 1938.

A letter called an "investment counselor agreement," outside structure indicating relationship of principal and agent, but providing for a contingent fee payable at end of year on net profits, is a "security." *Op. Atty. Gen.* (616b), Jan. 19, 1939.

Interest in limited partnership held a "security." *Op. Atty. Gen.* (616B-10), May 26, 1939.

3996-2. Securities exempted from operation of certain provisions of law.—The provisions of Sections 4, 5, 6, and 7 of this Act [§§3996-2, 3996-3(5), 3996-3(7), 3996-5], with respect to the registration of securities, shall not apply to the following securities:

(1) Any security issued or guaranteed by the United States or by any state or territory or insular possession thereof, or by the District of Columbia, or by any political subdivision or agency of a state, territory, or insular possession, or by the Dominion of Canada or any province or any political subdivision thereof, having the power of taxation or assessment.

(2) Any security issued by and representing an interest in, or issued by and representing a direct obligation of, a state bank organized and operating under the laws of Minnesota; and any security issued by a national bank or by a corporation or governmental agency created or existing by an Act of the Congress of the United States other than corporations created or existing under the code of laws for the District of Columbia or under the code of laws for any territory or possession of the United States, provided that such corporation is subject to supervision or regulation by the Government of the United States.

(3) Any security issued or guaranteed either as to principal, interest or dividends, by a railroad which is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by any regulatory board, body or official of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and all securities senior thereto; also equipment notes, bonds or trust certificates, bases on chattel mortgages, leases, or agreements for conditional sale, of cars, motive power or other rolling stock mortgaged, leased or sold, to or furnished for the use of any railroad, and equipment notes, bonds or trust certificates where the ownership of title of such equipment is pledged or retained in accordance with the provisions of the laws of the United States or of any state, or of the Dominion of Canada, to secure the payment of such equipment notes, bonds or trust certificates; provided that such railroad is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a regulatory board, body or official having like powers, of the United States or of any state or territory or insular possession of the United States, or of the District of Columbia, and also any interest bearing securities issued by a public service utility which utility is subject to regulation or supervision either as to its rates and charges or as to the issue of its own securities by a public service commission, or any board, body, or official having like powers, of the United States or of any state or territory, which security would, at the time of sale, qualify for registration under section 3996-6, subsection 2a, Chapter 21 B, Mason's Minnesota Statutes of 1927.

(3a) Securities listed on the New York Stock Exchange, New York Curb Exchange and Chicago Stock Exchange, which securities have been so listed pur-

suant to official authorization by such exchange, and all securities senior to any securities so listed, subscription rights so listed, or evidences of indebtedness guaranteed by companies any stock of which is so listed, such securities to be exempt only so long as each listing shall remain in effect.

(4) Any interest bearing securities listed on the New York Stock Exchange or New York Curb Exchange, which securities have been so listed pursuant to official authorization by either of said exchanges and all interest bearing securities senior to any interest bearing securities so listed, providing said securities are issued by any person owning a property, business, or industry which has been in continuous operation not less than five years, and which has shown during a period of not less than 3 years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges, not including the charges upon securities to be retired out of the proceeds of sale, and assets (not including patents, copyrights, secret processes, formulas, goodwill, trade marks, trade brands, franchises, and other like intangible property), as of the date of the close of its last fiscal year preceding the offering of such securities together with the proceeds of the sale of such securities accruing to the issuer, of not less than one and one-half times the annual interest charge thereon and upon all other outstanding interest bearing obligations of equal rank, and assets at least equal to one hundred twenty-five percentum of the face value of such interest bearing securities, and all other obligations of equal or prior rank outstanding and not to be retired out of the proceeds of the sale of such securities.

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

(6) Any security issued by a corporation organized exclusively for social, religious, educational, benevolent, fraternal, charitable or reformatory purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual.

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

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

(9) Securities of any co-operative association organized in good faith under the laws of this state exclusively for the purpose of conducting upon the co-operative plan among its members, stockholders and patrons any or all of the following businesses: Any agricultural, dairy, livestock or produce business; the business of selling, marketing or otherwise handling, any agricultural, dairy, or livestock products, or other produce, raised or produced by the members, stockholders and patrons of such association, or by any co-operative association; the manufacture of anything from any agricultural, dairy or livestock products, or other produce, produced by the members, stockholders and patrons of such association; any business incidental to any of the above purposes; the operation of a rural telephone or rural electric distribution system among its stockholders. Except as last hereinabove provided otherwise, all co-operative associations organized or existing under Chapter 326, Session Laws of Minnesota for 1923, shall be deemed with the purview of this Act; and any provision to the contrary in said Chapter 326, Laws 1923, is hereby repealed.

(10) The commission may, by written order, temporarily suspend or wholly revoke the exempt status of any security exempted by this section. ('25, c. 192, §2; '27, c. 66, §3; Apr. 25, 1931, c. 404; Apr. 22, 1933, c. 408, §4; Apr. 15, 1939, c. 275.)

Act Apr. 26, 1937, c. 481, §1, purports in its title and enacting clause to amend this section, but the promised amendment is not set out in the act.

Act Apr. 26, 1937, c. 481, §1, provides: "Mason's Minnesota Statutes for 1927, section 3996-2, subsection 4, is hereby amended to read as follows:" following which there is a blank space. The secretary of state's office have inserted the catch words, "Law repealed," but this is obviously insufficient as a repeal.

Act Apr. 15, 1939, c. 275, cited, amends subdivision (9) only.

Power of commerce commission to lift exempt statutes of securities listed on exchanges, discussed. Op. Atty. Gen., Mar. 24, 1933.

Certificates issued in connection with ownership and operation by municipalities of their electric light and power plants are exempted from operation of law relating to registration of securities, though payment of such securities is to be out of a fund other than that derived from taxation. Op. Atty. Gen., Apr. 10, 1933.

(1). Securities issued by an agency or public service commission owned by state or its subdivisions need not be registered pursuant to §§3996-4 to 3996-7. Op. Atty. Gen. (616b-4), Dec. 15, 1937.

(3). Exemptions which attach to a national bank with respect to sale of securities are not available to a broker engaged in the sale of bank stock, but not itself engaged in the banking business. *Stern v. N.*, (DC-Minn), 25FSupp948.

(6). This subsection exempts from registration first mortgage coupon bonds issued by a social and religious corporation not organized for pecuniary gain and no part of whose earnings inure to the benefit of any of its members. Op. Atty. Gen., Apr. 10, 1933.

Dividends or distribution of property upon dissolution of social and religious corporation is neither "net earnings" nor "pecuniary gain." Op. Atty. Gen., Apr. 10, 1933.

(7). Securities of a co-operative association organized in good faith to manufacture beer, malt and malt products and other beverages from agricultural products produced by members and patrons need not be registered. Op. Atty. Gen., Feb. 5, 1934.

(9). All burial associations organized under plan similar to that of Sunset Burial Association should be required to make application for registration of membership certificates. Op. Atty. Gen., Feb. 18, 1933.

Securities of a co-operative association authorized by its articles to engage in a general merchandise business, to purchase and sell any agricultural product, to distribute farm and household supplies and to deal in such other commodities as are required to meet needs of the members of the association is not exempt from provision of act relating to registration of stock. Op. Atty. Gen. (616b-8), Aug. 10, 1934.

(10). This subdivision, authorizing suspension or revocation of license, is constitutional. *Northwest Bancorporation v. B.*, (USDC-Minn), 6FSupp704; aff'd 292US606, 54SCR 775, 54SCR720. See Dun. Dig. 1125a, 1646.

Voluntary consent to revocation of exempt status of stock pending investigation held not to divest commission of jurisdiction. Id.

3996-3. Sales excepted from operation of law.—

(5) Any subscription for securities, when no cash or other consideration is paid by, or agreed to be paid by, the purchaser prior to the registration of the securities; provided, that all such subscriptions are expressly conditioned upon the registration of such securities within one year from the date of such subscription and otherwise to be null and void. (As amended Apr. 22, 1933, c. 408, §5.)

(7) The sale to any bank, savings institution, trust company, insurance company or licensed broker or dealer. (As amended Apr. 22, 1933, c. 408, §6.)

Stock of corporation formed among stockholders of bank to turn real estate asset of bank into cash and to hold such real estate, held not required to be registered in order to enforce subscription. *Isanti Inv. Co. v. J.*, 189M331, 249NW670. See Dun. Dig. 1125a.

A sale of bonds to a trust company is exempt though purchased for its trust accounts. Op. Atty. Gen., Dec. 5, 1931.

Sales of stock to stockholders without a license is violation of law unless made pursuant to increase of authorized capital stock. Op. Atty. Gen., Feb. 28, 1933.

Person operating grain marketing service and undertaking for a consideration to counsel subscribers as to trend of grain market does not sell securities and need not obtain a broker's license. Op. Atty. Gen., Apr. 28, 1933.

A grain marketing service given blank powers of attorney by which subscriber authorizes it to trade in grain or stocks in consideration of 25% of net profits, subscriber to furnish money, and purchases to be made

through regular licensed brokers need not obtain broker's license. *Id.*

Broker or dealer selling securities to a bank, savings institutions, trust companies, insurance companies, licensed dealers and brokers, need not be licensed. *Op. Atty. Gen.* (616b-4), Dec. 3, 1934.

(1).

Statute exempts sales negotiated through a licensed broker by individual owners, none of which were shown to have been made in the course of repeated or successive sales by such owner, or by broker as representative of such owner. *Parr v. C.*, 196M325, 265NW287. See *Dun. Dig.* 1125a.

Mere maintenance, with nothing more, by corporation which originally issued stock, of registrar and transfer agents, through which certain questioned sales of stock were cleared, is not enough to charge corporation or its management with aiding and abetting sales. *Id.*

Sale of unregistered stock by Minnesota corporation to group of people and issuance of separate stock certificates to each member of the group, held not "isolated sales" thereof excepted from operation of the law. *Op. Atty. Gen.*, Apr. 7, 1933.

Isolated sales of securities may be made, notwithstanding orders of commerce commission temporarily suspending registration and exempt status of common capital stock. *Op. Atty. Gen.*, Nov. 27, 1933.

A broker member of stock exchange receiving a number of sell orders for execution but acting for different owner in each sale would not violate any order of commerce commission forbidding sale of securities, but a broker not a member of a stock exchange could not execute such orders through a member of exchange. *Op. Atty. Gen.*, Nov. 29, 1933.

(4).

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

Where by amendment of its articles corporation increased amount of its authorized capital stock, and sold outright shares of increased stock to one of its stockholders, at par, there being no commission or brokerage expense in connection therewith, sale was exempted from registration. *Mertz v. H.*, 194M636, 261NW472. See *Dun. Dig.* 1125a.

Right of optional purchase of stock in endowment policy does not offend §3766, but does have effect of making policy a "security" within §3996-1(3), and writing of insurance a "sale" within §3996-4, requiring registration and license from commerce commission. *Op. Atty. Gen.* (249a-17), Mar. 19, 1937.

3996-4. Securities registered before sale—Application or notice.

In suit to recover purchase price of unregistered stock, plea of ratification, laches and estoppel held not sustained by record. *Shepard v. C.*, (DC-Minn), 24FSupp682.

In suit to recover purchase price of unregistered stock testimony to show that defendant had been advised by counsel that law of Minnesota did not require registration of the stock was incompetent and irrelevant. *Id.*

A sale of corporate stock which is not registered in accordance with statutes is illegal and consideration paid therefor can be recovered by purchaser. *Id.*

Six-year statute of limitations began to run against cause of action to recover purchase price of unregistered corporate stock upon discovery by the purchaser that the stock had not been registered. *Id.*

One engaged in the business of selling securities in Minnesota will be presumed to know of registration requirement. *Stern v. N.*, (DC-Minn), 25FSupp948.

Securities sold in Minnesota by nonresident broker, licensed under Minnesota Securities Law, required registration under Minnesota Blue Sky Law. *Id.*

The Securities Act is a valid exercise of the police power. *Stern v. N.*, (DC-Minn), 25FSupp949.

Sale of stock in violation of act is void. *Drees v. M.*, 189M608, 250NW563. See *Dun. Dig.* 1125a.

An officer of a corporation, aiding and participating in illegal sale of stock or securities of his corporation, is liable to purchaser for money paid therefor. *Id.* See *Dun. Dig.* 1125a.

Where president of corporation loaned money to defendants who purchased stock of corporation therewith and gave plaintiff note for money borrowed, fact that sale of stock was violation of Blue Sky Law furnished no defense to action on note. *Edson v. O.*, 190M444, 252NW217. See *Dun. Dig.* 1125a.

Transfer of stock of a corporation for stock of another corporation organized to take over stock of former corporation and issue its stock in payment therefor, constitutes a sale requiring registration. *Op. Atty. Gen.* (616b), Dec. 2, 1938.

If two corporations enter into an agreement to consolidate into a new corporation, stock of latter must be registered, and it would be immaterial that third corporation purchased assets of other corporation and paid therefor by issuance of its stock to the old corporation or their stockholders. *Id.*

3996-5. Registration by application.—Applications for registration of any securities subject to the provisions of this Act shall be made to the commission on forms prescribed by the commission, which appli-

cation shall be signed, and sworn to by the applicant and shall contain such information relative to the securities covered by such applications as the commission may deem necessary to enable it to determine whether such securities shall be registered.

The commission shall have power, in connection with pending applications for registration, to require the applicant to furnish in such form as it shall designate any additional information necessary to enable it to properly pass on the application before it; to order an appraisal, audit or such other expert technical examination and report as may seem necessary; and, where the applicant is the issuer of the securities, or is selling same for the issuer as broker or dealer, to make an investigation of the books, records, property, business and affairs of such issuer.

Upon compliance with all the provisions of this Act applicable to such application and the requirements of the commission, the commission shall either register such securities or deny the application. The commission shall have power to place such conditions, limitations and restrictions on any registration as may be necessary to carry out the purposes of this Act. Registration shall be by entry in a book called "Register of Securities," which entry shall show the securities registered and for whom registered, and the conditions, limitations and restrictions, if any, or shall make proper reference to a formal order of the commission on file showing such conditions, limitations and restrictions. A registration shall be made only for those on whose behalf application therefor was made, and shall authorize each of those for whom such registration was made to sell all or any portion of the securities so registered. A registration or registrations shall be good until exhausted by the sale of the securities so registered, or until suspended, cancelled or revoked, as hereinafter provided. The commission shall have power to deny an application for registration if the securities are fraudulent or if it appears to the commission that the sale thereof would work a fraud on purchasers thereof, or if the applicant has violated any of the provisions of this Act, or any registration or lawful order of the commission, or for good cause appearing to the commission. Denial shall be by written order. (25, c. 192, §5; Apr. 22, 1933, c. 408, §7.)

The Department of Commerce in considering evidence is not limited to jury trial rules of evidence. 174M200, 219NW81.

It was a subterfuge and an evasion of the statute for a company before its incorporation to sell notes of another corporation which could be exchanged for its stock. 174M200, 219NW81.

Order cancelling registration of securities of two corporations held improper and ineffective as to one of corporations, where it was granted upon application of only one of corporations without notice to other corporation. *State v. Dept. of Commerce*, 196M222, 264NW789. See *Dun. Dig.* 1125a.

3996-6. Registration by notification.—Whenever any securities required to be registered by the provisions of this Act fall within any of the following subsections of this section, any person entitled to have same registered may, in lieu of making application for registration as provided in Section 5 hereof, notify the commission of his intention to sell such securities, which notification shall be on forms prescribed by the commission, shall be signed and sworn to by the person giving the notice, and shall contain the following information:

- (a) Name of issuer.
- (b) Amount of issue and amount covered by the notification.
- (c) Statement that the securities fall within a designated subsection of this section.
- (d) A descriptive circular of statement briefly describing the securities.
- (e) The price at which the securities are to be sold.

(f) Names of the issuer or licensed brokers or dealers, if any, on whose behalf the notification is given.

The commission shall, for a period of 24 hours only from and after the receipt of any such notification accompanied by the proper fee as provided in Section 17, have the same powers on such notifications as it has on applications for registrations, and the same powers to deny the registration or to register the securities. Failure of the commission to take any formal action on a notification within said 24 hour period shall constitute a registration, subject to the terms of the notification, for those on whose behalf the notification was given.

The securities which may be submitted by notification of intention to sell are as follows:

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

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

(b) When the mortgage is upon city or village real estate or leaseholds and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the then fair market value of said real estate or leaseholds, including any improvements appurtenant thereto, and when said mortgaged property is used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or has a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

(c) When the mortgage is upon city or village real estate or leaseholds upon which real estate or leaseholds a building or buildings is or are about in good faith forthwith to be erected according to the expressed terms of the mortgage and when reasonably adequate provision has been made for financing the full completion of said building free and clear of any lien superior to said mortgage, and the aggregate face value of the notes or bonds covered by such notification together with all notes or bonds outstanding and equally secured by such mortgage does not exceed 70 per centum of the fair market value of such mortgaged property, including the building or buildings to be erected thereon as aforesaid, and when said mortgaged property is to be used principally to produce through rental a net annual income, after deducting operating expenses and taxes, or will have a fair rental value after deducting operating expenses and taxes, at least equal to the annual interest on such aggregate face value of notes or bonds plus not less than 3 per centum of the principal of said mortgage indebtedness.

Subsection 2. Securities issued by any person owning a property, business, or industry which has been in continuous operation not less than five years, and which has shown during a period of not less than three years or more than ten years next prior to the close of its last fiscal year preceding the offering of such securities, average annual net earnings, after deducting all prior charges, not including the charges upon securities to be retired out of the proceeds of sale, and assets (not including patents, copyrights, secret processes, formulas, good will, trade marks,

trade brands, franchises, and other like intangible property), as of the date of the close of its last fiscal year preceding the offering of such securities together with the proceeds of the sale of such securities accruing to the issuer as follows:

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

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

(c) In the case of common stock, not less than 6 per centum upon all outstanding common stock of equal rank together with the amount of common stock then offered for sale, all reckoned upon the price at which said stock is then offered for sale or sold.

For the purpose of registering under this subsection securities of any issuer owning more than 50% of the outstanding voting stock of a subsidiary company, such issuer shall be deemed to be the owner of the business of the subsidiary company, and the earnings of the subsidiary company applicable to the payment of dividends upon all stock of the subsidiary company owned by such issuer shall be considered as earnings of such issuer. ('25, c. 192, §6; '27, c. 66, §6; Apr. 22, 1933, c. 408, §8.)

(2).

A newly created corporation acquiring assets of three other companies which have shown net earnings over a period of more than three years, may not avail itself of earning record of companies acquired and should be registered by application rather than by notification. Op. Atty. Gen. (616b-1), Sept. 23, 1937.

Where a newly organized company acquires by purchase a majority interest of stock in several operating companies, new company can avail itself of earning record of subsidiary companies and register by notification. Id.

(2) (c).

Holding company is not owner of business of subsidiary company for all purposes. *Gislason v. H.*, 194M476, 260NW833. See Dun. Dig. 1125a.

3996-7. Additional registrations.—Any issuer of registered securities for whom such registration was not made, and any licensed broker or dealer for whom any registration was not made, may, provided such registration is still in effect, serve notice on the commission of his intention to sell such registered securities or a portion thereof. Such notice must be in writing or by telegram, and when actually received by the commission shall constitute a registration of the securities for the person giving the notice. Such notice may be served as to securities to be registered and shall constitute a registration for the person giving the notice only upon the actual registration of the securities as in this Act otherwise provided. No fees shall be paid on such notices. The notice herein provided for shall not be construed to apply to an intention to sell a block of securities of the same issue as those covered by a registration, which block is not a part of such registered securities but in addition thereto. Where a block of securities is registered for more than one person each and every registration shall be exhausted when the total amount so registered has been sold under one or more of the registrations. ('25, c. 192, §7; Apr. 22, 1933, c. 408, §9.)

3996-8. Information to commission by registrants— Powers as to investigations, etc.

A bank stock holding company and its subsidiary acting as its dealer, held properly joined in an order suspending the licenses of the holding company and its dealers pending an investigation of the principal company by the state's securities commission. *Northwest Bancorporation v. B.* (USDC-Minn), 6FSupp704; 292US 606, 54SCR775, 54SCR720. See Dun. Dig. 1125a.

In a proceeding by the securities commission suspending, and possibly revoking, the exempt status of certain securities, the procedure provided for the investigation of sales of securities held applicable. *Id.*

The securities commission, conducting an investigation under the securities act, has no unlimited or arbitrary powers, and it is not contemplated that it conduct secret hearings and receive ex parte information, and it is bound to conform to its own orders as to the time and form of its hearings. *Id.*

Where commission suspends sale of registered securities pending a hearing to show cause, and before the hearing requests a cancellation of the registration, the commission cannot compel by mandamus a production of the records and papers of the corporation, at least without alleging a specific violation of the act. 172M 328, 215NW186.

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

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

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

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

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

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

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

Whenever it shall appear from evidence satisfactory to the Commissioner of Securities that any securities are being sold, have been sold, or are about to be sold, and with fraudulent intent, in violation of any of the provisions of this Act, or that in the issuance, sale, promotion, negotiation, advertisement, or disposition of any securities including any securities exempted by Section 3996-2 of Mason's Minnesota Statutes for 1927, or in any transaction exempted by Section 3996-3 of Mason's Minnesota Statutes for 1927, any person shall have employed, or employs, or is about to employ any device, scheme or artifice to defraud or for obtaining any money or property by means of any false pretense, representation or promise, whether the same be a representation or promise of a present existing fact or otherwise, or that any person shall have made, makes or attempts to make, fictitious or pretended sale of securities, including any securities exempted by Section 3996-2 of Mason's Minnesota Statutes for 1927, or in any transaction exempted by Section 3996-3 of Mason's Minnesota Statutes for 1927, the commissioner shall have power to apply for an injunction in any court of competent jurisdiction to restrain such unlawful acts or fraudulent practices, or such proposed unlawful acts or fraudulent practices, without abridging the penalties and other remedies by this Act provided;

And in addition thereto, whenever any of said facts in this Section referred to are made to appear, from evidence satisfactory to the commissioner, or whenever it shall be made to appear by satisfactory evidence to the commissioner that any of said companies licensed under this Act are operating or conducting their business, or have operated or conducted their business, contrary to the laws of this state, or with disregard to the rights of investors therein who have purchased securities or investment contracts, the Department of Commerce by and with the consent of the Governor of this state may apply to any court of competent jurisdiction for a receiver to be appointed for the property, assets, business and affairs of said person, firm, co-partnership, association or corporation, whose securities have been so sold, or who have sold or are selling such securities; and upon such showing

made to such court, the court shall appoint a receiver therefor to liquidate, wind up, conserve the assets of said person, firm, co-partnership, association or corporation, or to conduct or carry on such business, or otherwise dispose of the same with due regard to the rights of creditors and the holders and purchasers of said securities or investment contracts.

In any proceeding brought under the provisions of this Act in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight (8) days' notice to the defendant therein; and such cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the State of Minnesota, except upon good cause shown to the court, and then only for such reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant party. (Act Apr. 22, 1933, c. 408, §10.)

Trader notified by broker that his margin is below his indebtedness to broker and below requirements, must act promptly to take care of his account and margin securities. *Conolly v. F.*, 186M8, 242NW334. See *Dun. Dig.* 1128a.

Trader failing to repudiate sale by broker to protect himself for period of four weeks and accepting balance of proceeds, ratifies sale. *Conolly v. F.*, 186M8, 242NW 334.

Where plaintiff's cause of action arises out of dealings with nonresident defendants and their associates as brokers in stocks, bonds, or securities, licensed under §3996-9, and such nonresident defendants have appointed commissioner of securities as their attorney irrevocable upon whom service of process may be made, pursuant to §3996-11, service of summons as therein prescribed conferred jurisdiction of persons of such nonresident defendants. *Kaiser v. E.*, 197M28, 265NW826. See *Dun. Dig.* 7814.

A state bank not having fiduciary powers granted by §7663 is without power to act as broker of securities, but one having such powers may act as broker. *Op. Atty. Gen.*, Aug. 1, 1933.

Trust companies organized under §§7730 to 7740 may act as brokers of securities. *Id.*

Broker or dealer selling securities to a bank, savings institutions, trust companies, insurance companies, licensed dealers and brokers, need not be licensed. *Op. Atty. Gen.* (616b-4), Dec. 3, 1934.

National banks are not required to procure a dealer's or broker's license under state securities law, but state is authorized to deal with transactions which are in excess of authority conferred by Congress and which violate laws of state. *Op. Atty. Gen.* (32b-1), Nov. 30, 1938.

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

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

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

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

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

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

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

An agent's license may be canceled by the commission at any time at the request of either the issuer, broker, or dealer for whom such agent was licensed, or the agent. ('25, c. 192, §10; '27, c. 66, §8; Apr. 22, 1933, c. 408, §11; Apr. 26, 1937, c. 481, §2.)

Requirements of Laws 1933, c. 408, as to residence and bond did not apply to existing holders of licenses. *Op. Atty. Gen.*, June 7, 1933.

Residence must be for one year immediately prior to making application for license. *Id.*

One licensed to sell securities as an agent of a licensed broker cannot sell securities as agent for a licensed dealer without specific license therefor. Op. Atty. Gen., June 28, 1933.

3996-11. Agents for service of process.—Every non-resident person shall, before having any securities registered or being licensed as a broker, dealer, or agent, appoint the "Commissioner of Securities," and his successor in office, his attorney upon whom process may be served in any action or proceeding against such person or in which such person may be a party, in relation to or involving any transaction covered by this Act, which appointment shall be irrevocable. Service upon such attorney shall be as valid and binding as if due and personal service had been made upon such person. Such service shall be by duplicate copies, one of which shall be filed in the office of the commission and the other immediately forwarded by registered mail to the person so served at the address on file with the commission. Provided, that any such appointment shall become effective upon the registration of the securities or the issuance of the license in connection with which such appointment was filed. ('25, c. 192, §11; Apr. 22, 1933, c. 408, §12.)

Jurisdiction conferred by this section upon Commissioner of Securities is not limited to typical Blue Sky suits, but extends to actions based upon fraud involving transactions which Securities Act is designed to prevent. Vogel v. C., (USDC-Minn), 19FSupp564.

Where Commissioner of Securities and his successor in office was designated by foreign corporation for service of process upon it, service upon such commissioner's deputy, during the commissioner's absence from the seat of government was good. Id.

Jurisdiction over nonresident corporation licensed in the state and authorized to carry on its business under the Securities Act could be obtained in any suit, whether it arose within the state or elsewhere. Stern v. N., (DC-Minn), 25FSupp948.

Jurisdiction may be acquired by service of process under this section only if suit is one in relation to or involving transaction covered by the act. Zochrisson v. R., 200M383, 274NW536. See Dun. Dig. 1125a(84), 7814.

License provided for in §§7493, 7494, is not license prescribed by §3996-11, and where a cause of action arises against a foreign corporation while it was licensed to do a brokerage business under §3996-11 and had appointed chairman of securities commission its agent to receive service, it could not be served with process under §7494 where its license to transact business as a foreign corporation was not granted until after cause arose. Anderson v. C., 193M443, 258NW743. See Dun. Dig. 7814.

Where plaintiff's cause of action arises out of dealings with nonresident defendants and their associates as brokers in stocks, bonds, or securities, licensed under §3996-9, and such nonresident defendants have appointed commissioner of securities as their attorney irrevocable upon whom service of process may be made, pursuant to §3996-11, service of summons as therein prescribed conferred jurisdiction of persons of such nonresident defendants. Kaiser v. B., 197M28, 265NW826. See Dun. Dig. 7814.

Service of summons on a foreign corporation, held valid and effective by service on Commissioner of Securities; it appearing that cause of action was based upon alleged violation of Blue Sky Law in sale of unregistered stock to plaintiff, in this state, while defendant was therein conducting its business as a licensed stock broker and had appointed commissioner its attorney to receive service. Streissguth v. C., 198M17, 268NW638. See Dun. Dig. 7814.

Service not having been attempted on commissioner of securities or secretary of state as agent for service of process, question of their agency to accept service of process is not in the case so as to affect validity of attempted service upon an alleged agent, doing business in state. Garber v. B., 285NW723. See Dun. Dig. 1125a.

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

No circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter (hereinafter referred to as advertising matter) containing or constituting an offer to sell any securities which have been registered in compliance with the provisions of Sections 5 and 6 hereof, shall be pub-

lished, circulated, distributed, or caused to be published, circulated or distributed, in any manner, unless and until such advertising matter shall have been submitted in duplicate to the commission and approved by it. The commission shall have power to disapprove any such advertising matter which it deems in conflict with the purposes of this Act.

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

The provisions of this section shall not apply to securities exempted under Section 2 of this Act, nor to sales of securities made in a manner exempted under Section 3 of this Act. ('25, c. 192, §14; Apr. 22, 1933, c. 408, §13; Apr. 26, 1937, c. 481, §3.)

(2) On notification of intention to sell, 50c per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$100.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall not exceed \$5.00.

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

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

(5) On application for dealers' licenses, \$100.00.

No application or notification of intention to sell shall be given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. (As amended Apr. 22, 1933, c. 408, §13; Apr. 17, 1937, c. 243, §1.)

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

(1) On application for registration, \$1.00 per \$1,000 on the total proposed sale price of the securities covered by such application; provided, that the minimum fee shall be \$25.00, and the maximum fee \$500.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall be \$5.00.

(2) On notification of intention to sell, 50c per \$1,000 on the total proposed sale price of the securities covered by such notification; provided, that the minimum fee shall be \$10.00 and the maximum fee \$100.00. Provided, however, that the fee charged any cooperative association organized in good faith under the laws of this State shall not exceed \$5.00.

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

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

(5) On application for dealers' licenses, \$100.00.

No application or notification of intention to sell shall be given any effect until the proper fee is paid. All fees and charges collected by the commission shall be covered into the state treasury. (As amended Apr. 22, 1933, c. 408, §14; Apr. 17, 1937, c. 243.)

3996-19. Investigations and powers of commission.

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

tion, investigation and audit. If such securities were or are about to be sold for or on behalf of the issuer thereof the Commission shall have like powers as against such issuer.

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

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

The Attorney General shall assign from his staff an assistant attorney general who shall be attorney and counsel for the Division of Securities and the Department of Commerce, and shall have charge of and may conduct all prosecutions for the violation or prosecutions involving the violation of this Act and all other proceedings for the enforcement thereof.

The Bureau of Criminal Apprehension shall be at the service of the Division of Securities and the Department of Commerce and at the service of the assistant attorney general assigned thereto, for the purpose of detecting and apprehending any violators of this law and gathering evidence and otherwise aiding in the prosecution of such violators.

The commission may by summons or subpoena require the attendance and testimony of witnesses and the production of books or papers before it relating to any matter as to which it has jurisdiction under this Act. Such a summons or subpoena may be issued by any commissioner. It shall be served in the same manner as a summons or subpoena for witnesses in criminal cases issued on behalf of the state, and all provisions of law relative to a summons or subpoena issued in such cases shall apply to a summons or subpoena issued under this Act so far as applicable. Any commissioner may require any witnesses to be sworn before testifying. Any judge of the district court may, upon application by the Attorney General on behalf of the commission, compel the attendance of witnesses and the giving of testimony before the commission in the same manner and to the same extent as before said court.

A natural person who shall claim the privilege of refusing to testify on the ground that his testimony or evidence, documentary or otherwise, might tend to criminate or subject him to a penalty or forfeiture, shall not be excused on said ground from attending and testifying before the commission acting under the

provisions of this Act; but such natural person, having claimed said privilege and having been required nevertheless to testify, shall not be prosecuted or subjected to a penalty or forfeiture for, or on account of, any action, matter or thing, concerning which he may be required so to testify or produce evidence, except for perjury committed in such testimony. ('25, c. 192, §18; Apr. 22, 1933, c. 408, §15.)

172M328, 215NW186; note under §3996-8.

This section is constitutional, and the act is not invalid on the ground that its subject is not expressed in its title. Northwest Bancorporation v. B. (USDC-Minn), 6FSupp704, 292US606, 54SCR775, 54SCR720. See Dun. Dig. 8920.

That some of the acts drawn within the scope of an investigation of the operations of a bank stock holding company may be of a criminal nature does not render the investigation violative of constitutional rights. Id. See Dun. Dig. 1646.

The right of the commission to investigate violations of the securities act is restricted, and it must have reasonable ground to believe that such violations occurred within three years. Id. See Dun. Dig. 1125A.

Commission may investigate sales working a fraud on investors, though the acts complained were not made penal by the act at the time they were committed. Id.

Orders to subsidiary of licensee company held within powers of commission. Id.

Procedure under this section is applicable to proceeding under §3996-2(10) to revoke exempt status of stock. Id.

3996-22. Violations of law—Penalties.

Edson v. O., 190M444, 252NW217; note under §3996-4.

Streissguth v. C., 198M17, 268NW638; note under §3996-11.

A sale of securities in violation of the Blue Sky Law is void, and where third party rights have not intervened purchaser may recover in suit against seller without tender or rescission before trial. Stern v. N., (DC-Minn), 25FSupp948.

Sale of stock in violation of act is void. Drees v. M., 189M608, 250NW563. See Dun. Dig. 1125a.

Mere maintenance, with nothing more, by corporation which originally issued stock, of registrar and transfer agents, through which certain questioned sales of stock were cleared, is not enough to charge corporation or its management with aiding and abetting sales. Parr v. C., 196M325, 265NW287. See Dun. Dig. 1125a.

An officer of a corporation aiding and participating in illegal sale of stock or securities of his corporation, is liable to purchaser for money paid therefor. Id. See Dun. Dig. 1125a.

3996-24. Other actions or prosecutions not limited.

An action for damages for violation of Blue Sky Law accrues when sale is made, but where plaintiff draws his complaint on theory of actual fraud based on either expressed or implied representations the statute of limitations begins to run from time of discovery of the fraud. Stern v. N., (DC-Minn), 25FSupp948.

Action to recover money paid for stock sold in violation of act, no rescission or tender back of stock, held necessary under circumstances. Drees v. M., 189M608, 250NW563. See Dun. Dig. 1125a.

Action to recover money paid for stock sold in violation of act is not one in quasi contract for money had and received but for recovery on ground of tort. Id. See Dun. Dig. 1125a.

Plaintiffs by electing to sue as minority stockholders in a foreign corporation seeking an accounting and other equitable relief by virtue of their stock ownership, thereby waived alleged fraudulent practices by corporation in selling stock. Zochrisson v. R., 200M383, 274NW 536. See Dun. Dig. 1125a.

Measure of damages in an action for fraud in sale of corporate securities. 23MinnLawRev205.

3996-27. Certiorari from Supreme Court.

Determination of securities division denying registration for new financial plan, held not arbitrary or unreasonable. 178M623, 228NW162.

3996-29. Violation of act a felony.—Whoever shall with fraudulent intent sell, or cause to be sold, or in any manner participate, directly or indirectly, in the sale of any stocks, bonds, investment contracts or other securities, as in this Act defined, pursuant to any scheme or artifice to defraud, or by means of false or fraudulent pretenses, representations or promises, including fraudulent promises as to the worth or earnings of such stock in the future, or by means of any false or fictitious financial statement or representation as to the worth thereof, or otherwise, shall be guilty of a felony, and upon conviction thereof shall be punished in the same manner as upon con-

viction for obtaining money under false pretenses. (Act Apr. 22, 1933, c. 408, §15.)

This section and the following section are combined in a single section by Act Apr. 22, 1933, c. 408, §15, which is added to Mason's Minnesota Statutes, 1927, as §3996-30, but the title of the new act may be insufficient to carry the amendment. See note under §3996-1.

3996-30. Notice to be printed on circulars and stock certificates, bonds or other instruments.—Every circular, prospectus, advertisement, printed matter, document, pamphlet, leaflet or other matter containing or constituting an offer to sell securities registered by application shall have either printed or stamped on the face thereof in not less than ten-point, red bold-faced type the following (except that in case of newspaper and other advertising in publications of general circulation other coloring may be used):

NOTICE: While the laws of the State of Minnesota permit the sale of the securities herein described such legal permission does not mean that the State of Minnesota guarantees the success of the enterprise covered by such securities.

Each and every stock certificate, bond or other investment instrument, licensed and issued under the provisions of this Act, shall, upon delivery and sale, be accompanied by a certificate on the face of which the following shall appear:

NOTICE: While the laws of the State of Minnesota permit the sale of the attached securities such legal permission does not mean that the State of Minnesota guarantees the success of the enterprise covered by such certificate.

The failure on the part of any vendor of such stock certificate, bond or other investment instrument, licensed and issued under the provisions of this Act to attach to such certificate, bond or investment instrument the notice herein prescribed shall constitute a misdemeanor and be punished accordingly. (Act Apr. 22, 1933, c. 408, §15.)

This section is added to Mason's Minnesota Statutes, 1927, but the title may be insufficient to carry it. See note under §3996-1.

Act Apr. 26, 1937, c. 481, §4, provides: "Mason's Minnesota Statutes for 1927, section 3996-30, is hereby amended to read as follows:" following which there is a blank space. The Secretary of State's office has inserted the catch words, "Law repealed," but this is obviously insufficient as a repeal.

3996-30a. Assistant Attorney General for securities commission.—The attorney general shall appoint an assistant attorney general, to be in addition to the number now authorized by law, whose appointment shall be approved by the governor and who shall be attorney and counsel for the division of securities under the department of commerce, and shall have charge of and may conduct all prosecutions for violation of the securities laws of the state, and all other proceedings for the enforcement thereof. Such assistant shall receive the same salary as the other assistant attorneys general, which salary, and the expenses and disbursements of such assistant actually and necessarily incurred in the performance of his duties under this act, shall be paid from the moneys appropriated to and for the use of the commissioner of securities. (Act Apr. 25, 1931, c. 382, §1.)

The title of Act Apr. 25, 1931, c. 382, set forth herein as §§3996-29 to 3996-35, is as follows: "An act creating a securities commission, prescribing the members thereof, defining the duties and powers of such members and fixing their salaries, providing certain regulations as to securities under the jurisdiction of said securities commission, transferring all rights, powers and duties now vested in the commissioner of securities under sections 3997, 3998 and 3999, Mason's Minnesota Statutes for 1927, and repealing inconsistent laws." This title seems rather unsuited to the provisions incorporated into the bill as enacted.

Sections 1 and 2 of this act are unconstitutional for not being expressed in the title of the act. Op. Atty. Gen., July 17, 1931.

3996-30b. Bureau of criminal apprehension to assist securities commission.—The bureau of criminal apprehension shall be at the service of the division of securities under the department of commerce and at

the service of the assistant attorney general designated as attorney for the division of securities for the purpose of detecting and apprehending violators of the securities laws of the state and gathering evidence and otherwise aiding in the prosecution of such violators.

At the request of the commissioner of securities or of said assistant attorney general, the county attorney of the county in which any violation of the securities laws of the state occur shall commence and conduct criminal prosecutions.

Upon the request of any county attorney, the commissioner of securities and said assistant attorney general shall give assistance in any criminal prosecution for the violation of the securities laws. (Act Apr. 25, 1931, c. 382, §2.)

Unconstitutional. See notes under §3996-30a.

3996-31. Brokers or agents to report sales.—The department of commerce may at any time or times require any issuer, broker or agent to report to the department of commerce all sales of any specified security registered or required to be registered under the securities law. Such reports shall be made within (10) days after demand therefor by the department of commerce and shall be open for inspection only to public authorities and then only upon a court order. Any person who shall make known in any manner not provided by law any information contained in such reports shall be guilty of a gross misdemeanor. (Act Apr. 25, 1931, c. 382, §3.)

3996-32. Notice to be printed on circular.

This section is amended by Act Apr. 22, 1933, c. 408, §15, and renumbered §3996-30. The text as amended is set forth, ante, as §3996-30. The amendment, however, may be unconstitutional as not embraced in the title of the amendatory act. See §3996-1, note.

Notice provided for in this section must be printed in each and every individual advertisement appearing in the newspaper. Op. Atty. Gen., July 11, 1931.

The notice required by this section must be inserted in each advertisement constituting an offer for sale of securities. Op. Atty. Gen., Dec. 3, 1931.

3996-33. Notice to be printed on stock certificate.

Amended and renumbered §3996-29. See note under §3996-32.

3996-34. Inconsistent acts repealed.—All acts or parts of acts now in effect inconsistent with the provisions of this act are hereby superseded, modified or amended to conform to and give full force and effect to the provisions of this act. (Act Apr. 25, 1931, c. 382, §6.)

3996-35. Effective July 1, 1931.—This act shall take effect and be in force from and after July 1, 1931. (Act Apr. 25, 1931, c. 382, §7.)

3996-36. Sale of liquor warehouse receipts declared to be sale of securities.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period of liquor in a duly bonded warehouse in any state other than the state of Minnesota, is hereby declared to be a sale of securities and/or investment contracts as defined by Section 3996-1 of Mason's Minnesota Statutes, 1927, and that the sale of such Warehouse Receipts is hereby permitted and legalized by duly licensed brokers and/or agents without having to procure a liquor license, when such liquor is not to be shipped nor imported into the State of Minnesota, except as authorized by law. (Apr. 6, 1937, c. 145, §1.)

Act is constitutional. Op. Atty. Gen. (218j-18), Apr. 26, 1937.

Warehouse receipts are securities for all purposes of registration and license under the securities law. Id.

3996-37. Same.—The sale of Warehouse Receipts for the storing of liquor during the aging or processing period in bonded warehouses within the state, is hereby declared to be a sale of securities and/or investment contracts, as defined by Section 3996-1 of Mason's Minnesota Statutes, 1927, and sales thereof are hereby permitted as provided in Section 2 hereof. (Apr. 6, 1937, c. 145, §2.)

3996-38. Brokers must obtain licenses.—Any Broker and/or Agent, before offering for sale or selling such Warehouse Receipts, shall obtain a Broker's and/or Agent's License, for the sale of securities, from the Commission, under the rules and regulations of the Department of Commerce. (Apr. 6, 1937, c. 145, §2.)

3996-39. Violation a gross misdemeanor.—Any person violating the provisions hereof, shall be guilty of a gross misdemeanor. (Apr. 6, 1936, c. 145, §3.)

Sec. 4 of Act Apr. 6, 1937, cited, provides that the Act shall take effect from its passage.

3997. Bank applications must be approved by state securities commission.

Trust companies may engage in banking business only upon compliance with this section. Op. Atty. Gen. (29a-30), Jan. 23, 1937.

3997-1. Department of Commerce need not give notice in certain cases.—That the Department of Com-

merce of this State may, at its discretion, dispense with the notice and hearing provided for by General Statutes 1923, Section 3997, in cases where application is made for the incorporation of a new bank to take over the assets of one or more existing banks, or where the application contemplates the re-organization of a national bank into a state bank in the same locality; Provided this act shall not increase the number of banks in the community affected. (Act Apr. 10, 1929, c. 146.)

SALE OF OIL AND GAS LANDS OR INTERESTS THEREIN

4000-1. Registration of lands or interests before sale by department of commerce.

A syndicate for acquisition of oil lands or interest therein may be organized without necessity of registration, but repeated or successive sales of interests must be registered. Op. Atty. Gen. (616d-8), Aug. 25, 1938.

CHAPTER 22

Forestry and Forest and Prairie Fires

Laws 1931, c. 186, ante, §§53-23a to 53-231, creates a new department of conservation, to which is transferred the power of the commissioner of forestry and fire prevention.

FORESTRY ACT

4031-1. Codification of forestry laws.

County commissioners in counties having state or federal forests, may establish districts and regulate the use of the lands therein. Laws 1939, c. 340.

Commission for study of forestry. Laws 1939, c. 418. It was competent for the Legislature to classify counties and to impose more drastic regulations for prevention of fires in certain counties than in others. 176M 472, 223NW912.

The subject of chapter 407, Laws 1925, known as the Forestry Act is sufficiently expressed in its title. 176M 472, 223NW912.

4031-6. Same—Officers—State forester—Etc.

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

It is not necessary for state employes to be accompanied by a companion while in forest. Op. Atty. Gen., July 6, 1933.

4031-10½ to 4031-10¾l. [Repealed.]

Repealed Apr. 21, 1939, c. 382, §9, post §4031-10¾u. The repealed sections consisted of Act April 22, 1933, c. 418, §§1-13.

ANNOTATIONS UNDER REPEALED SECTIONS

4031-10½a. Exchange of lands authorized.

Conservation Commission has no authority to exchange lands outside conservation zones in exchange for lands within such zones without concrete action of executive council and county board. Op. Atty. Gen., Sept. 28, 1933.

Commission is not authorized to exchange lands acquired by state under rural credit act for lands within conservation or forest areas. Id.

4031-10½m. Land exchange commission created.

There is hereby created a Land Exchange Commission, in this act called the Commission, which shall consist of the Governor, the Attorney General and the State Auditor. (Act Apr. 21, 1939, c. 382, §1.)

4031-10½n. Same—May exchange land to consolidate holdings.—For the purpose of consolidating the holdings of land owned by the state the Commission may, by unanimous approval, exchange any lands to which the state now holds title or to which title shall be acquired by the state, including lands held in trust for any purpose, for lands of equal value and kind owned by the United States or lands owned by private citizens or corporations. Provided, however, that the lands so acquired shall be subject to the trust, if any, to which the lands exchanged therefor were subject. The Commission is hereby author-

ized to convey in behalf of the state, title by deed attested by the commissioner of conservation, to any such lands so exchanged, provided, however, that in the deed of conveyance there shall be reserved to the state all minerals and all water power rights in the said state lands. Provided further that the exchange program under this act will be conducted in a manner that will not materially decrease but rather which will increase the state's total holdings of timber, and of water frontage desirable for public use and enjoyment. (Act Apr. 21, 1939, c. 382, §2.)

4031-10¾o. Commission may make terms of exchange.—Any exchange of land made under this act, may be made upon any condition as to payment of further compensation to the state which said commission may deem proper, and if payment of further compensation is required, such payment shall be made in such manner and upon such terms as the said commission shall determine, subject to the following limitations: if payment is not made at the time of the exchange, the unpaid balance shall be secured by contract for deed on the land of which the state is disposing, payable in ten equal annual installments with interest at 3 per cent per annum, payable annually, the first installment and the first interest to be due on December 1, following the date of the exchange. (Act Apr. 21, 1939, c. 382, §3.)

4031-10¾p. Owner may file proposal for exchange.—Any owner desiring to effect an exchange of lands hereunder shall file with the commissioner of conservation on a form furnished by said commissioner a proposal of exchange giving the legal description of his land and the state land for which he desires to exchange. With such proposal he shall present his affidavit describing fully any liens or encumbrances affecting the title thereto and that there is no person in possession of any part of said land claiming interest therein who has not joined in such request, and that no improvements have been made thereon for which any person has the right to assert a lien. (Act Apr. 21, 1939, c. 382, §4.)

4031-10¾q. Owner to furnish abstract of title.—Such proposal shall be reviewed by the Commissioner of Conservation and if he finds the proposed exchange would effect a desirable consolidation of state land holdings he shall require the applicant for exchange to furnish an abstract evidencing marketable title. Said commissioner shall thereupon cause an examination and appraisal to be made by men qualified as land or timber appraisers under existing laws, of the