1940 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1940)

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

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

Edited by

William H. Mason

Assisted by

The Publisher's Editorial Staff

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blanks so transmitted. If necessary the public examiner or his assistants are authorized to examine local records, in order to complete or verify the information. (Act Apr. 22, 1939, c. 431, Art. 4, §5.)

3286-13. Shall make and file annual report.—The public examiner shall make and file annually in his office a summary report of the information collected, with such compilations and analyses and interpretations as may be deemed helpful. (Act Apr. 22, 1939, c. 431, Art. 4, §6.)

3286-14. Shall investigate accounting and budgeting systems.—The public exxaminer shall inquire into the accounting and budgeting systems of all local units of government and shall prescribe suitable systems of accounts and budgeting, and forms, books, and instructions concerning the same. At the request of any local unit of government the public examiner may install such systems. (Act Apr. 22, 1939, c. 431, Art. 4, §7.)

3286-15. Shall be subject to prior laws—Employees—Expenses of local examinations—Repeal.—Subject to the provisions of this chapter, the public examiner shall have and exercise all the rights, powers, and duties conferred upon the former public examiner by Mason's Minnesota Statutes of 1927, Sections 3274, 3275, 3276, 3277, 3279, 3280, 3281, 3282, 3283, 3284, and 3286, and the 1938 Supplement to Mason's Minnesota Statutes of 1927, Sections 3278, 3286-1, 3286-2, 3286-3, 3286-4, 3286-5, 3286-6, and 3286-7, and acts amendatory thereof or supplementary thereto, and all the provisions of said statutes shall apply to and govern all matters therein specified respecting the office and department of the public examiner created by this act, except that any limitations therein contained as to the number of employes to be appointed by the public examiner shall not apply; provided, that the public examiner shall account separately for all of the charges, receipts, and disbursements of the department of public examiner pertaining to the examining and auditing of all school districts, towns, cities, villages, and boroughs for which charges are made, and after allocating to the expense thereof a proper pro-rata share of the administrative expense, such functions of the department of public examiner shall be sustained, so far as practicable, by the funds collected therefor from such political subdivisions as otherwise provided by law. Mason's Minnesota Statutes of 1927, Section 3285, is hereby repealed. (Act Apr. 22, 1939, c. 431, Art. 4, §8.)

3286-16. Powers and duties of comptroller, board of audit and former public examiner transferred.—The powers and duties of the board of audit and of the former public examiner, heretofore transferred to, vested in, and imposed upon the comptroller, are hereby transferred to, vested in, and imposed upon the public examiner created by this act. (Act Apr. 22, 1939, c. 431, Art. 4, §9.)

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.)

3294. Commissioner may appoint examiner.
Special examiners employed in division of insurance are not state employees within meaning of retirement act, unless they are employed continuously for a period of six months or more. Op. Atty. Gen. (331a-8), Sept. 7, 1935.

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.
Section 2720-116 gives commissioner of insurance authority to approve rate for "motor vehicle liability policies" in light of requisite reserves set out in §3304, but does not give authority to approve rates for other types of liability policies. Op. Atty. Gen. (249B-3), July 6, 1939.
(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. Metropolitan Nat. Bank of Minneapolis v. N., (USDC-Minn) 48F(2d)611. See Dun. Dig. 4336.
Retirement annuity contract held not an insurance contract within state exemption statute, and cash value of retirement annuities thereunder, as of the date of adjudication of bankruptcy, vested in the trustee in bankruptcy. Walsh, (USDC-Minn), 19FSupp567.
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.
Doubt as to meaning of insurance policy must be construed against insurer. Citizens Loan & Investment Co. v. S., 195M515, 263NW541. See Dun. Dig. 4659.
An oral contract of present insurance is valid. Glens Falls Indemnity Co. v. D., 203M68, 279NW845. See Dun. Dig. 4647.
An insurance contract is any agreement whereby one party, for a consideration, undertakes to indemnify another to a specified amount against loss or damage from specified causes, or to do some act of value to the assured in case of such loss or damage. Hayfield Farmers Elevator & Mercantile Co. v. N., 203M522, 282NW265. See Dun. Dig. 4640(91).
Fidelity bonds are treated as insurance contracts. Id.
General law of contracts applies to contracts of insurance except as otherwise provided by statute. Id.
Fundamentally insurance contracts are like any other contract and governed by same underlying principles. Maryland Casualty Co. v. A., 204M43, 282NW806. See Dun. Dig. 4640.
If there is no statute governing form and content of policy of insurance, parties are free to incorporate such provisions and conditions as they desire, subject only to such restrictions of law as are other parties to voluntary contract. Id. See Dun. Dig. 4646a.
Where legislature has prescribed a statutory form of policy any provision to contrary in policy contract is ineffective. Id. See Dun. Dig. 4646a.
Definition of insurance does not prohibit parties to a workmen's compensation insurance policy from determining as between themselves extent of absolute liability or from requiring employer to reimburse insurer in certain cases. Id. See Dun. Dig. 10391.
Whether a given risk is covered by insurance is determined by terms of policy, and insurer is not liable unless risk is within policy coverage. Gudbrandsen v. P., 287NW116. See Dun. Dig. 4640.
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.
Agreement between unincorporated association and another insuring against loss or damage to automobile and giving bail and legal services in civil and criminal actions, tow service, roadside repairs and mechanical advice, was a contract of insurance. Op. Atty. Gen. (249a-7), Aug. 1, 1935.
State departments may insure against risk of loss of money and securities by theft or burglary. Op. Atty. Gen. (249b-17), Feb. 26, 1937.
The making of a contract of insurance in Minnesota. 17MinnLawRev567.
Delay in acting on application for insurance—tort liability. 33MichLawRev907.

3315. 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.

Board of public works of city of Alexandria may enter into a contract for group life insurance on employees of municipal water and light plant, and pay half of the premium. Op. Atty. Gen. (253b-4), Aug. 13, 1937.

(a) (1).

Recoverage against direct loss caused by sprinkler leakage, wind and hail, explosion, riot and civil commotion, and aircraft damage cannot be included in a fire policy. Op. Atty. Gen. (252j), Jan. 6, 1936.

(a) (3).

In action by city upon machinery policy of insurance, evidence held to support finding that breakdown in steam turbine was due to "accidental" rupturing of casting which immediately impaired functioning of machinery. City of Detroit Lakes v. T., 201M26, 275NW371.

(a) (5).

Standard workmen's compensation policy of insurance held to protect employer under an accident not covered by workmen's compensation act and from judgment obtained in an action at law in state court. Globe Indemnity Co. v. B., (USCCA8), 90F(2d)774.

A policy of insurance to indemnify against loss by reason of liability imposed by law for damages on account of injuries sustained as a result of an accident occurring "on or about" a "gasoline and oil supply station" does not cover damages resulting from accident occurring on private premises two blocks away, where boy who purchased gasoline in a coffee can was burned. Hultquist v. N., 202M352, 278NW524. See Dun. Dig. 4337.

(a) (7).

A title insurance company whose income is derived from interest on its investments as well as from making and sale of abstracts and from title insurance premiums is not required to pay moneys and credits and general property taxes in addition to those imposed upon it as a title insurance company. State v. Title Ins. Co., 197M 432, 267NW427. See Dun. Dig. 9568.

(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. 4875i.

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. 4875i.

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.

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

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.

Automobile liability policy did not cover negligence of car salesman of insured who was driving car purchased under conditional sales contract on a pleasure trip. Downing v. S., 197M429, 267NW809. See Dun. Dig. 4875c.

Whether defendant was employee of state highway patrol and protected by liability policy held question of fact, though there was some evidence that he had been discharged. Strobel v. A., 199M211, 271NW477. See Dun. Dig. 4875c.

Mother of widowed daughter who went back to live with parents was member of "same household" as injured daughter within automobile liability policy, excepting liability for injuries to persons in same household. Engebretson v. A., 199M399, 271NW809. See Dun. Dig. 4875c.

The purpose of requiring proof of loss under a policy is to provide the insurer with information from which it may determine its liability. Knudson v. A., 199M479, 272NW376. See Dun. Dig. 4782.

Named assured having given due notice of happening of accident, and garnishee liability insurer having defended him in action out of which plaintiff's recovery resulted, garnishee cannot complain of lack of notice from additional assured, absent showing of harmful result to garnishee. Id. See Dun. Dig. 4783.

Milk wagon driver who left wagon in front of building and carried bottles in container to elevator for purpose of taking milk to an upper floor for distribution to customers had completed process of "unloading" within meaning of terms public and property damage liability policy, and injury of person in building due to movement of elevator was not due to "use" or operation and maintenance of milk wagon. Franklin Co-Op. Creamery Ass'n v. E., 200M230, 273NW809. See Dun. Dig. 4659.

Where there is no insurance coverage, insurer cannot be held liable either in action on policy or as garnishee in action against insured. Giacomo v. S., 203M185, 280 NW653. See Dun. Dig. 4875c.

An insurance policy from which liability is excluded while automobile is driven or operated by a person violating any law as to driving license, does not cover an accident occurring while automobile is driven by one who does not have a driver's license. Id.

Exclusion from insurance coverage of driving which is prohibited by law is not unreasonable and void. Id.

Where an exclusion is provided in the policy, no causal connection need be shown between accident and excluded risk. Id.

Violation of a law which became effective after policy was issued comes within exclusion clause. Id.

Compulsory insurance to provide compensation to persons injured because of fault in operation of motor vehicles requires legislative action, and in absence of such action, court must take insurance policies as parties have made them. Id.

Executive and administrative officers cannot relieve parties from complying with a law or ordinance. Id.

Risk assumed by an insurer may be defined both by terms of inclusion and exclusion. Id.

Except as limited by statute, parties to an insurance contract are free to agree upon such terms as they may determine. Id.

Construction of insurance policy must be in favor of insured and against insurer, especially with respect to conditions involving a forfeiture, but there can be no construction when policy is not ambiguous. Id. See Dun. Dig. 4659, 4830.

It takes something more than a mere mistake of judgment to constitute bad faith, particularly with respect to action of insurer under a policy of public liability which does not bind him to make a settlement. Lawson v. N., 204M50, 282NW481. See Dun. Dig. 4875d.

Where a liability policy issued to a corporation contains omnibus clause covering business and pleasure use, pleasure use is that of those permitted to use car with permission of corporation as named insured. Schultz v. K., 204M585, 284NW782. See Dun. Dig. 4875c.

Where an insurer issued a liability policy to a county containing an omnibus clause by terms of which insurance covered an employee while driving county's automobile with its consent, insurer, for lack of interest in that question, will not be heard to question right of county to permit its employee to use automobile. Id. See Dun. Dig. 4480, 7582.

Mere failure of insurer to notify insured of offer to compromise a judgment, entered against insured in favor of person injured in an accident covered by policy, held not to justify jury in finding bad faith or actionable negligence proximately injuring insured. Norwood v. T., 204 M595, 284NW785. See Dun. Dig. 4875d.

A collision insurer paying insured and taking an assignment of his cause of action was not liable for costs in an action brought by insured, insurer being entitled to subrogation only to part of recovery, and not appearing as party in action. Dreyer v. O., 287NW13. See Dun. Dig. 4875o.

An omnibus clause extends insurance coverage to any person while using automobile with consent of named insured, but does not enlarge insurance coverage as defined in policy, and where policy definitely limits liability to a designated use of automobile, insurance does not cover other uses. Gudbrandsen v. P., 287NW116. See Dun. Dig. 4875c.

A policy of insurance indemnifying insured against risks incident to hauling of coal with trucks for a named company does not cover risks incident to use of a truck by one of its employees for his pleasure after working hours. Id. See Dun. Dig. 4875c.

Where a motor truck was purchased for use in a business but title was taken in name of father of man in business, and theft policy was issued in name of father, by agents having knowledge of real ownership, and action was brought upon policy in name of father, court did not abuse its discretion in permitting an amendment so as to name real owner as plaintiff. Mullany v. F., 287NW118. See Dun. Dig. 4875i.

Under rules embodied in statutes defining larceny, evidence that party took an automobile without owner's permission, drove car until it collided with a curb and tree, where wrongdoer left it, is sufficient to support a finding of larceny or theft. Id. See Dun. Dig. 4875i.

Driver of school bus may secure liability insurance at his own expense for his own protection, but this does not impose liability on district. Op. Atty. Gen. (844f-6), Apr. 10, 1937.

School district need not carry liability insurance. Op. Atty. Gen. (844a-20), Sept. 10, 1938.

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

Cooperation of insured with liability insurer. 19Minn LawRev444.

Right of contribution between insurers of joint tort feasors. 20MinnLawRev236.

Construction of "permission" in omnibus coverage clause. 23MinnLawRev227.

(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, c. 73, is constitutional. Op. Atty. Gen., May 24, 1933.

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

3316. Insurance not specifically authorized by law may be transacted by licensed companies upon authorization by commissioner.

Recoverage against direct loss caused by sprinkler leakage, wind and hail, explosion, riot and civil commotion, and aircraft damage cannot be included in a fire policy. Op. Atty. Gen. (252j), Jan. 6, 1936.

This section did not authorize hospital group insurance policy purporting to insure more than one person. Op. Atty. Gen. (249b-9), Jan. 26, 1939.

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.

3320. Bonds of secretaries and treasurers of companies—Investment of funds—Etc.

Term "home office" is synonymous with term "principal place of business." Op. Atty. Gen. (92b-7), July 16, 1937.

3321. Agents and persons authorized to act.

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.

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.

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.

Statutes relative to agent's licenses do not apply to township mutual insurance company. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

3322. Capital stock to be paid in full—Investment of funds.—1. Bonds or treasury notes of the United States, national or state bank stock, interest-bearing bonds or certificates of indebtedness at market value of this or any other state, or of any city, town, or county in this or any other state, or of the Dominion of Canada or any province thereof, having legal authority to issue the same, at market value, subject in every case to the same limitations and restrictions, according to the last assessment for taxation, which exists in this state upon issue of securities by such or like municipalities, at the date of the investment, or debentures issued by the Federal Housing Administrator or obligations of National Mortgage Associations. (As amended Mar. 23, 1937, c. 86, §1.)

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, or notes or bonds secured by mortgage, or trust deed in the nature thereof, which the Federal Housing Administrator has insured or made a commitment to insure. (As amended Apr. 10, 1929, c. 148; Mar. 23, 1937, c. 86, §2.)

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.

3333. Real estate.

See §3385 on same subject.

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.

3334-1. Bankruptcy or insolvency of insured not to relieve insuror of obligations.—Every bond or policy of insurance hereafter issued in this state insuring against either actual loss suffered by the insured, and imposed by law for damages on account of personal injury, death or injury to property caused by accident, or legal liability imposed upon the insured by reason of such injuries or death, shall, notwithstanding anything in said policy to the contrary, be deemed to contain the following condition:

The bankruptcy or insolvency of the insured shall not relieve the insurer of any of its obligations under this policy, and in case an execution against the insured on a final judgment is returned unsatisfied, then such judgment creditor shall have a right of action on this policy against the company to the same extent that the insured would have, had the insured paid said final judgment. (Apr. 8, 1937, c. 183, §1.)

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.)

3340. Commission to hear petition—Hearing—Disposition of surplus assets.

State commerce commission, and not commission created under this section, has jurisdiction of consolidation and re-insurance of domestic insurance companies. Op. Atty. Gen. (249b-16), Apr. 6, 1938.

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 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.)

A title insurance company whose income is derived from interest on its investments as well as from making and sale of abstracts and from title insurance premiums is not required to pay moneys and credits and general personal property taxes in addition to those imposed upon it as a title insurance company. State v. Title Ins. Co., 197M432, 267NW427. See Dun. Dig. 9568.

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.

A township mutual insurance company is liable for premium tax on fire insurance policies written in any municipality maintaining an organized fire department, but not on other policies. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

Two per cent tax on gross premiums of mutual companies, domestic and foreign, includes tax on membership fees. Op. Atty. Gen. (254e), June 10, 1938.

Commissioner of administration has no power under laws 1939, c. 431, art. II, §16, to reduce expenditure for aid to fire departments. Op. Atty. Gen. (640a), Sept. 2, 1939.

PROVISIONS COMMON TO ALL COMPANIES

3348. Definitions.

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

Where insurer customarily dates policies of insurance as of date of application instead of day of issuance, its soliciting agents have implied authority to enter into contracts of insurance with applicants for interim between application and acceptance. Glens Falls Indemnity Co. v. D., 203M68, 279NW845. See Dun. Dig. 4655, 4704.

Privilege of disaffirming a voidable contract entered into by soliciting agent of an insurer is waived by insurer where it accepts premiums with full knowledge of facts upon which informity of contract is based. Id. See Dun. Dig. 4681, 4684, 4704.

Conceding that an insurer, absent its prior consent, is not absolutely bound by a contract entered into by its agent with a company in which agent is an officer and stockholder, yet contract is no more than voidable and principal must disaffirm it in order to escape its obligations, and acceptance of premiums to its full knowledge of fact constitutes an affirmance. Id. See Dun. Dig. 4684.

If an act inconsistent with disaffirmance of contract of agent is done by principal, privilege of disaffirmance is waived. Id. See Dun. Dig. 4704.

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.

3352. Qualifications, applications, revocation.

Order of insurance commissioner prohibiting use of private publications containing specific ratings for comparative ratings of insurance companies should be modified so as not to prohibit proper and lawful use of honest publications containing reports upon history, financial condition, management and operating results of various insurance companies. Op. Atty. Gen. (250b), Aug. 26, 1935.

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.

1. 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, n23.

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.

Section 3370, and not §3396, applies, in so far as practical, to reinstatement of lapsed life insurance policies, issued upon medical examinations. Robbins v. N., 195M 205, 262NW210, 872. See Dun. Dig. 4665.

Misrepresentation on application for policy was a defense in an action for total disability payment, though misrepresentation was made more than two years prior to disability. Schaedler v. N., 201M327, 276NW235. See Dun. Dig. 4673.

False misrepresentation with reference to consultation with physician was immaterial where insured considered ailment as trivial and not continuous in nature. Id.

A material misrepresentation avoids policy regardless of intent if it increases risk of loss, but immaterial misrepresentation, though made with intent to defraud, does not avoid policy. Id.

Where a loss occurs after application is made but prior to acceptance by insurer, failure to disclose loss to insurer until after issuance of policy is not conclusive evidence of fraud. Glens Falls Indemnity Co. v. D., 203M 68, 279NW845. See Dun. Dig. 4652, 4670.

Mortgagor and mortgagee may each insure their respective interests in same property without disclosing nature of particular interests of each unless specifically inquired about. Olszewski v. S., 203M333, 281NW267. See Dun. Dig. 4670.

Concealment of a moral hazard. 19MinnLawRev810.

3. Acts of agent.

Hafner v. P., 188M481, 247NW576; note under §3396.

Where false answers to questions were inserted in application by medical examiner without knowledge of insured, there can be no avoidance when it is shown that insured, at time of signing application, had opportunity and ability to read questions and answers. Sorenson v. N., 195M298, 262NW868. See Dun. Dig. 4662.

4. Notice of misrepresentation.

Insurer in industrial policy issued without written application and without medical examination was liable for face of policy, though insured was not in good health at time of application or delivery of policy, where parents informed soliciting agent that insured had not been in good health for seven years. Kueppers v. M., 199M248, 271NW453. See Dun. Dig. 4682.

6. 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., 195M31, 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.

In action to recover payments for total disability, defendant had burden of proof to establish falsity of plaintiff's answers to questions propounded in application for reinstatement of his policy. Schaedler v. N., 201M327, 276 NW235. See Dun. Dig. 4666.

Upon issue of misrepresentation in application which would make void provision for total disability benefits, findings for plaintiff are sustained by evidence. Id.

Where insured testified that insurer was informed that insured was only a mortgagee, and witnesses for insurer testified that insured falsely represented that she was owner, and question as to insurable interest on application was not filled in at all, inference was permissible that no questions at all were asked on insurable interest. Olszewski v. S., 203M333, 281NW267. See Dun. Dig. 4670.

7. 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.

Finding in verdict that insured made false statement in application for reinstatement held not inconsistent with special finding that false answer did not increase risk of loss and beneficiary was entitled to recover. Robbins v. N., 195M205, 262NW210, 872. See Dun. Dig. 4673.

Whether discovery of mastoid condition between application for reinstatement and acceptance thereof avoided policy, held for jury. Robbins v. N., 195M205, 262NW872. See Dun. Dig. 4670.

Whether a misrepresentation is material, and whether it increases risk of loss, and whether it is made with intent to deceive, are usually questions of fact for jury with burden of proof upon insurer. Schaedler v. N., 201M 327, 276NW235. See Dun. Dig. 4666.

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.

Insured not having exercised option, given by terms of his life insurance policy, within stipulated time after lapse for non-payment of premium, policy became automatically a paid-up policy for amount that then cash value of policy would purchase as a net single premium. Moshou v. B., 203M90, 280NW14. See Dun. Dig. 4816.

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; 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; and obligations of national mortgage associations. (As amended Apr. 29, 1935, c. 365, §1; Mar. 23, 1937, c. 87, §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, which the Federal Housing Administrator has insured or made a commitment to insure. (As amended Apr. 29, 1935, c. 365, §2; Mar. 23, 1937, c. 87, §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.)

3385. Real estate holdings of domestic life companies.

See §3333 on same subject.

3387. Who entitled to proceeds of life policy.

See notes under §3399, note 7h.

Retirement annuity contract held not an insurance contract within state exemption statute, and cash value of retirement annuities thereunder, as of the date of adjudication of bankruptcy, vested in the trustee in bankruptcy. Walsh, (USDC-Minn), 19FSupp567.

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.

In a suit upon a life insurance policy, trial court's refusal to exercise its inherent power to order in as additional defendants four creditors of insured's estate, who claimed that premiums upon policy were paid in fraud of them, was an abuse of judicial discretion. Minnesota Nat. Bank v. E., 197M340, 267NW202. See Dun. Dig. 4813.

Validity and effect of exemptions from claims of creditors. 22MinnLawRev1052.

Fraudulent conveyance. 23MinnLawRev616.

3388. Exemption in favor of family—Etc.

Walsh, (USDC-Minn), 19FSupp567. See note under §3387.

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.

Insured not having exercised option, given by terms of his life insurance policy, within stipulated time after lapse for non-payment of premium, policy became automatically a paid-up policy for amount that then cash value of policy would purchase as a net single premium. Moshou v. B., 203M90, 280NW14. See Dun. Dig. 4816.

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

This section is a recognition of the distinction between the application and the policy as affecting duty of insurer to file form of application with form of the policy. First Trust Co. v. K., (USCCA8), 79F(2d)48.

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.

Section 3370, and not §3396, applies, in so far as practical, to reinstatement of lapsed life insurance policies, issued upon medical examinations. Robbins v. N., 195M205, 262NW210, 872. See Dun. Dig. 4665.

Provision for avoidance of policy issued without medical examination if statements made in application were wilfully false and intentionally misleading cannot be circumvented by insertion in policy of a condition that policy shall not take effect if insured is not in sound health at date of issuance thereof, and rule is same where application is not attached to policy. Thompson v. P., 196M372, 265NW28. See Dun. Dig. 4665.

Claim that plaintiff voluntarily litigated question as to sound health of deceased held to be without merit. Id. See Dun. Dig. 4809.

Insurer in industrial policy issued without written application and without medical examination was liable for face of policy, though insured was not in good health at time of application or delivery of policy, where parents informed soliciting agent that insured had not been in good health for seven years. Kueppers v. M., 199M248, 271NW453. See Dun. Dig. 4673.

Provision for avoidance of life policy issued without medical examination only if statements in application were willfully false or intentionally misleading could not be circumvented by condition in policy that it should not take effect if insured was not in sound health at date of policy. Haan v. P., 201M135, 275NW689. See Dun. Dig. 4808a.

In action on industrial policy issued without knowledge or consent of insured, burden was on defendant to show that plaintiff had knowledge or information concerning ailment of insured which was misrepresented. Dight v. P., 201M247, 276NW3. See Dun. Dig. 4669.

Evidence justified findings on questions of fraud and misrepresentation, and particularly findings to effect that there was no evidence of willful or intentional misstatements. Id.

Insurer, having issued industrial life insurance policy upon application of beneficiary and having accepted premiums for four years with knowledge that application was made without knowledge or consent of insured was precluded from asserting that policy was void. Id. See Dun. Dig. 4684.

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.

Industrial policies issued without medical examination should be liberally construed, in view of fact that they are often written upon solicitation of agents for people unable to understand their effect or meaning. Dight v. P., 201M247, 276NW3. See Dun. Dig. 4808a.

Life insurance policies should be given a reasonable and practical construction not inconsistent with language therein used to effectuate intention of parties. First Trust Co. v. N., 204M244, 283NW236. 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. E., 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 overcharge 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.

Acceptance and retention of dividend deposit certificates by insured held to estop insured and beneficiary from claiming that sum represented by such certificates should have been used by insurer to prevent policy from lapsing for nonpayment of premium. Norby v. C., 201M 375, 276NW278. See Dun. Dig. 4816.

Where evidence permits view that insurer's records and conduct are explainable only upon assumption that a premium has been paid, it supports a finding that premium was in fact paid. Vorlicky v. M., 287NW109. See Dun. Dig. 4816.

Where insurer received a partial payment of premium after a policy according to its terms had lapsed and carried policy on its records as being in force until after death of insured, it waived payment in full of premium at time and policy did not lapse for non-payment of premium. Id. See Dun. Dig. 4684(95).

3. Permanent and total disability.

One unable to follow with any reasonable regularity any substantially gainful occupation is totally disabled within war risk insurance policy. Walsh v. U. S., (DC-Minn), 24FSupp877.

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

A release of liability on lump sum settlement of total disability liability under life policy, and judgment of dismissal based thereon, could not be set aside on ground of mistake in that all parties to agreement believed that insured was only temporarily disabled, there being no liability in absence of permanent total disability. Rusch v. P., 197M81, 266NW86. See Dun. Dig. 4871c.

Total and permanent disability so as to prevent insured from engaging in any occupation and performing any work for compensation or profit means any occupation similar to that in which he was ordinarily engaged before disability, or one for which he may fit himself within a reasonable time. Lorentz v. A., 197M205, 266 NW699. See Dun. Dig. 4871c.

Where first disability payment became due day satisfactory proof of such disbility was received by insurer at home office, and a like amount on same day of every month thereafter during continuance of disability, there can be no recovery for any period of total and permanent disability existing prior to and not included in first payment; there being no claim that the disability rendered insured incapable of furnishing proof thereof. Floyd M. Andrews, Inc., v. A., 198M1, 268NW415. See Dun. Dig. 4871c.

Life insurance company having made payment for total and permanent disability for nine years could not claim that proofs of disability were not sufficient. Wold v. S., 198M451, 270NW150. See Dun. Dig. 4680, 4789.

Defendant's liability under policy disability provision can be terminated only as authorized thereby. Id. See Dun. Dig. 4871b.

Jury's finding that disability was not caused by disease having its inception prior to date of issuance of policy held sustained by evidence. Midland Nat. Life Ins. Co. v. W., 199M618, 273NW195. See Dun. Dig. 4871c.

Insured's statement of his age, in application which becomes part of a life and disability insurance policy, becomes a term of policy and, as such, as to limitation in point of time on obligation of insurer to pay disability benefits, is binding on insured. Fine v. E., 200M301, 274 NW163. See Dun. Dig. 4674(60).

Partially blind insured managing mercantile business held not permanently and totally disabled. Id. See Dun. Dig. 4871c.

In action on disability clauses in Illinois contracts of insurance, under Illinois law, it was not error to charge that jury would be justified in finding that insured was totally and permanently disabled if it found that he "was suffering from such impairment of health and capacity that he was unable to follow, with reasonable continuity, the substantial and material parts of some gainful work or occupation." Preveden v. M., 200M523, 274NW685. See Dun. Dig. 4871c.

Upon issue of misrepresentation in application which would make void provision for total disability benefits, verdict and findings for plaintiff are sustained by evidence. Schaedler v. N., 201M327, 276NW235. See Dun. Dig. 4666.

Provision in policy excluding from disability benefits in case of naval or military service in war should be construed to mean such services after policy took effect. Id. See Dun. Dig. 4871c.

Complaint in action to recover disability annuity under life policy, alleging that plaintiff became totally disabled and informed local agent who fraudulently assured him that he was not entitled to payment unless it was necessary for him to remain in bed and plaintiff permitted policy to lapse because of financial inability to earn money to pay premium and did not discover until nine years later fraud of agent, held good as against demurrer. Stark v. E., 285NW466. 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.

Where there was a fact issue as to whether insured died as a result of heart disease or accidentally from heat exhaustion, there existed a case susceptible of compromise of double indemnity feature of life insurance policy, and a compromise was binding on beneficiary, as against contention that insurer's obligations for accidental death benefit was liquidated. Walgren v. P., 285 NW525. See Dun. Dig. 4817.

5. Proof of loss.

Hearsay statements from others than the assured, received by a physician 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.

Purpose of furnishing proof of loss under a policy of insurance is to provide insurer with information from which it may determine its liability. Wold v. S., 198M451, 270NW150. See Dun. Dig. 4782.

Purpose of furnishing proof of loss is to provide insurer with information from which it may determine its liability. Midland Nat. Life Ins. Co. v. W., 199M618, 273 NW195. See Dun. Dig. 4782.

Medical experts consider that death takes place upon cessation of vital functions of respiration and circulation. Vaegemast v. H., 203M207, 280NW641.

Where insured and his beneficiary wife were killed in same automobile accident, record sustained finding that wife survived her husband by an appreciable length of time. Id. See Dun. Dig. 4815.

Insured's financial embarrassment or lack of it may be shown to prove presence or absence of motive where it is claimed that death was caused by suicide. Scott v. P., 203M547, 282NW467. See Dun. Dig. 3236.

That insured died from a gunshot wound in right side of head one inch above and slightly forward from ear, with powder burns surrounding wound, does not require a finding of suicide where no motive or disposition to commit suicide is shown and evidence shows that insured may have shot himself accidentally in reaching back with his right hand to get gun with which shot was fired which was then between seat and back cushion of cab of truck in which deceased was riding. Id. See Dun. Dig. 4811.

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 years' 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.

There was no error in not permitting administrator of wife named as beneficiary to plead and prove that insured intended to take a five year old child of wife into his home and name child a beneficiary in insurance policy, insured and wife dying in same disaster. Miller v. M., 198M497, 270NW559. See Dun. Dig. 4812.

Evidence held to sustain verdict of jury that a change of beneficiary made by insured while suffering from mental ailments was a valid instrument. Timm v. S., 203M1, 279NW754. See Dun. Dig. 4813.

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.

Statement by insured that he was in good health when he had in fact taken treatment for diabetes, held to avoid policy. First Tr. Co. v. Kansas City L. I. Co. (US CCA8), 79F(2d)48.

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.

7f. Options.

See notes under §§3377, 3392.

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 than 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.

Where insured assigned policies to beneficiary, and she in turn assigned them in trust for her own benefit, including all rights and privileges and options which she held under the policy, corporate trustee could exercise any option provided in policies after death of insured, as against contention that trustee was not beneficiary who alone had right to exercise options after the death of insured. First Trust Co. v. N., 203M244, 283NW236. See Dun. Dig. 4693.

7g. Assignment of policy.

Insurance policies payable to estate of insured only should insured survive beneficiary, held not assignable or subject to pledge without consent of beneficiary, and not subject to federal estate tax where beneficiary survived insured. Walker v. U. S. (USCCA8), 83F(2d)103.

Where insurance company notwithstanding notice of pledge paid face of policy to beneficiary without requiring surrender of policy duly released as its contract gave it the right to require, pledgee by failing to bring proceedings to prevent such action did not waive its rights as pledgee nor was it estopped. Janesville State Bank v. A., 200M312, 274NW232. See Dun. Dig. 4693.

Although a life insurance policy provided that no assignment thereof should be binding upon company unless in writing and filed with company, such policy might be pledged as collateral security without such writing. Id.

Assignments of life insurance policies should be given a reasonable and practical construction not inconsistent with language used to effectuate intention of parties. First Trust Co. v. N., 204M244, 283NW236. See Dun. Dig. 4693.

Assignment of life insurance policy by insured to beneficiary, vested in latter entire legal and equitable interest which beneficiary was free to dispose of as she pleased, including assignment in trust for her own benefit. Id. See Dun. Dig. 4693.

Where an assignment is made in good faith and not as cover for initial issuance of a life insurance policy in favor of one with no insurable interest in life of insured, it is not essential that assignee have such insurable interest. Peel v. R., 286NW345. See Dun. Dig. 4693.

Individual certificate of insurance issued to an employe insured by his employer under a "master policy" on group plan, may be subject of a gift, certificate evidencing employe's personal insurance. Id. See Dun. Dig. 4693.

Provision in master policy that no assignment by employe of his personal insurance "shall be binding upon the Company until the original or duplicate thereof shall be filed at the Company's Home Office" is for benefit of insurer, and does not limit otherwise power of insured to dispose of his certificates by assignment or gift. Id. See Dun. Dig. 4693.

7h. Who entitled to proceeds.

See notes under §3387.

Where insured abandoned his wife leaving impression of having committed suicide and married another in a distant city and formed a corporation with another person and each member of corporation took out a life insurance policy making trust company beneficiary and legal owner of stock of corporation, insurance money going to wife of person first dying, and stock of corporation to surviving business associate, there was created a conventional life insurance trust which was contractual and a transaction inter vivos rather than testamentary, and original wife of insured had no right to insurance money, if trust agreement contemplated that second wife should be beneficiary. Soper's Estate, 196M60, 264NW427. See Dun. Dig. 4812.

Where husband insured his life in favor of his wife, policy stipulating that in event of death of any beneciary before death of insured, interest of beneficiary should vest in insured, insured also retaining right to change beneficiary, and husband and wife perished in a common catastrophe, burden was upon representative of wife's estate to prove that she survived her husband. Miller v. M., 198M497, 270NW559. See Dun. Dig. 4813.

A creditor has an insurable interest in life of his debtor Dight v. P., 201M247, 276NW3. See Dun. Dig. 4641.

Where insured and beneficiary wife were killed in same automobile accident, record sustained finding that wife survived her husband an appreciable length of time. Vaegemast v. H., 203M207, 280NW641. See Dun. Dig. 4812.

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.

Evidence sustains verdict that defendant, having accepted overdue premium with knowledge that assured was ill, and having retained such premium payment until after assured's death, waived lapse of a policy of life insurance, though receipt given was conditional. Wagner v. S., 197M319, 267NW216. See Dun. Dig. 4684, 4809, 4814.

There may be an express or an implied waiver of proofs of loss and a waiver may be inferred from any words or conduct of insurer's authorized officers or agents evincing an intention not to insist on compliance with requirements of policy in respect to proofs of loss and calculated to lead insured to believe that they will not be insisted on. Wold v. S., 198M451, 270NW150. See Dun. Dig. 4789.

Courts should not search for an avenue of escape to benefit an insurer that has taken premiums from an applicant named as beneficiary in a policy for nearly four years. Dight v. P., 201M247, 276NW3. See Dun. Dig. 4684.

Where local agent of an insurer was authorized to reinstate a policy for non-payment of premiums within time at which a balance due on premium was tendered to him, acceptance of amount paid by insurer with knowledge constituted a waiver of any claim that premium was not paid when due. Vorlicky v. M., 287NW109. See Dun. Dig. 4684(95).

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.

An insurer may not avail itself of defense that statements made by insured in application for a non-medical examination policy were wilfully false and intentionally misleading unless application is attached to policy, where policy contains a provision to that effect. Thompson v. P., 196M372, 265NW28. See Dun. Dig. 4665.

Insurer's answer presented no fact issue. Wold v. S., 198M451, 270NW150. See Dun. Dig. 4736.

No reversible error was made in not receiving in evidence a wrist watch worn by the wife, which had stopped at 12:15, for, without objection, witnesses not contradicted testified that watch so indicated, and, moreover, that fact did not tend to prove that she survived her husband. Id. See Dun. Dig. 424.

Where request of an autopsy in action on life policy was delayed until a few days before day set for trial, refusal to grant same cannot be held an abuse of discretion. Id. See Dun. Dig. 4872.

Testimony that beneficiary was a creditor of insured held admissible as tending to prove insurable interest of beneficiary in life of insured. Dight v. P., 201M247, 276 NW3. See Dun. Dig. 4641.

Defendant insurer was not entitled to closing argument to jury, its concession of total disability not having gone to issue that total disability did not arise from ailments occurring prior to issue of policy. Schaedler v. N., 201M327, 276NW235. See Dun. Dig. 4871c.

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.

This section recognizes a distinction between the application and the policy in determining whether section 3408 requires that the form of application shall accompany the form of policy to be filed with the commissioner. First Trust Co. v. K., (USCCA8), 79F(2d)48.

Provision in life policy, that upon default it should be automatically extended without benefit of double indemnity, was valid. Johnson v. C., 187M611, 246NW 354; 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.

Misrepresentation on application for policy was a defense to an action for total disability payment, though misrepresentation was made more than two years prior to disability. Schaedler v. N., 201M327, 276NW235. See Dun. Dig. 4809.

(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.

3408. Commissioner's approval of forms of policy.

Portion of application containing questions and answers, and insured's signature, held admissible as against contention that such form had not been filed with the commissioner as a part of the policy. First Trust Co. v. K. (USCCA8), 79F(2d)48.

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 v. N., 185M184, 240NW363. See Dun. Dig. 4646a, 4655.

ACCIDENT AND HEALTH INSURANCE

3415. Form of policy to be approved by commissioner.—Subdivision 1. On and after the first day of January, 1914, no policy of insurance against loss or damage from the sickness, or the bodily injury or death of the insured by accident shall be issued or delivered to any person in this state until a copy of the form thereof and of the classification of risks, if more than one class of risks is written and the premium rates pertaining thereto have been filed with the commissioner of insurance; nor shall it be so issued or delivered until the expiration of thirty days after it has been so filed unless the said commissioner shall sooner give his written approval thereto. If the said commissioner shall notify, in writing the company, corporation, association, society or other insurer which has filed such form that it does not comply with the requirements of law, specifying the reasons for his opinion, it shall be unlawful thereafter for any such insurer to issue any policy in such form. The action of the said commissioner in this regard shall be subject to review by any court of competent jurisdiction, provided, however, that nothing in this act shall be so construed as to give jurisdiction to any court not already having jurisdiction.

Subdivision 2. Group accident and health insurance is hereby declared to be that form of accident and health insurance covering not less than twenty-five employees or members, and which may include the employee's or member's dependents, consisting of husband, wife, children, and actual dependents residing in the household, written under a master policy

issued to any governmental corporation, unit, agency or department thereof, or to any corporations, copartnership, individual, employer, or to any association having a constitution or by-laws and formed in good faith for purposes other than that of obtaining insurance under the provisions of this act, where officers, members, employees or classes or divisions thereof, may be insured for their individual benefit.

Any insurance company authorized to write accident and health insurance in this State shall have power to issue group accident and health policies. No policy of group accident and health insurance may be issued or delivered in this State unless a copy of the form thereof has been submitted to the commissioner of insurance for his inspection and by him accepted for filing in his office. Such forms shall contain the standard provisions relating and applicable to health and accident insurance insofar as they may be applicable to group accident and health insurance, and also the following provisions:

(a) A provision that the policy and the application of the employer, or executive officer or trustee of any association, and the individual applications, if any, of the employees or members insured shall constitute the entire contract between the parties, and that all statements made by the employer or any executive officer or trustee in behalf of the group to be insured, or by the individual employees or members to be insured shall (in the absence of fraud), be deemed representations and not warranties, and that no such statement shall be used in defense to a claim under the policy, unless it is contained in the written application.

(b) A provision that the insurer will issue a master policy to the employer, or to the executive officer or trustee of the association. Such insurer shall also issue to the employer or to the executive officer or trustee of the association, for delivery to the employee or member, who is insured under such policy, an individual certificate setting forth a statement as to the insurance protection to which he is entitled and to whom payable, together with a statement as to when and where such master policy or a copy thereof may be seen for inspection by the individual insured. Such individual certificate may contain the names of and insure the dependents of such employee or member as provided for herein.

(c) A provision that to the group or class thereof originally insured may be added from time to time all new employees of the employer or members of the association eligible to and applying for insurance in such group or class and covered or to be covered by such master policy.

Family group accident and health insurance is hereby declared to be that form of accident and health insurance covering members of any one family including husband, wife, children, and dependents residing in the household, written under a master or single policy issued to the head of such family. Any insurance company authorized to write accident and health insurance in this state shall have the power to issue family group accident and health insurance. No policy of family group accident and health insurance may be issued or delivered in this state unless a copy of the form thereof has been submitted to the commissioner of insurance and by him accepted for filing in his office. Such forms shall contain the standard provisions relating to and applicable to accident and health insurance and the following provisions:

(a) A provision that the policy and the application of the head of the family shall constitute the entire contract between the parties, and that all statements made by the head of the family shall in the absence of fraud, be deemed representations and not warranties, and that no statement of the insured in connection with the application shall be used in defense to a claim under the policy, unless it is contained in the written application.

(b) A provision that to the family group originally insured may be added from time to time all new members of the family eligible for insurance in such family group. (As amended Apr. 5, 1939, c. 146, §1.)

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.

Recovery on policy of accident insurance denied for failure to give timely notice of loss which was prerequisite to right of recovery. Lepak v. C., 198M134, 269NW 89. See Dun. Dig. 4782.

Group policies issued under Laws 1939, c. 146, should contain only such standard provisions referred to in §3417 as are applicable, together with provisions set out in such chapter 146. Op. Atty. Gen. (249B-8), June 2, 1939.

Effect of a provision avoiding liability for benefits where death or disability results from violation of law. 23MinnLawRev229.

Duty to submit to surgical treatment as a prerequisite to recovery of benefits. 23MinnLawRev384.

3416. Provisions.—No such policy shall be so issued or delivered (1) unless the entire money and other considerations therefor are expressed in the policy; nor (2) unless the time at which the insurance thereunder takes effect and terminates is stated in a portion of the policy preceding its execution by the insurer; nor (3) if the policy purports to insure more than one person except as provided by Section 3415, Subdivision 2, nor (4) unless every printed portion thereof and of any endorsements or attached papers shall be plainly printed in type of which the face shall be not smaller than ten-point; nor (5) unless a brief description thereof be printed on its first page and on its filing back in type of which the face shall be not smaller than fourteen point, nor (6) unless the exceptions of the policy be printed with the same prominence as the benefits to which they apply, provided, however, that any portion of such policy which purports, by reason of the circumstances under which a loss is incurred, to reduce any indemnity promised therein to an amount less than that provided for the same loss occurring under ordinary circumstances, shall be printed in bold face type and with greater prominence than any other portion of the text of the policy. (As amended Apr. 5, 1939, c. 146, §2.)

(3).

A hospital group policy held to violate this section. Op. Atty. Gen. (249b-9), Jan. 26, 1939.

3417. Standard provisions.

1. In general.

In case of incurable disability half of indemnity could not be paid until death. Schmitt v. Massachusetts Protective Ass'n (CCA8), 32F(2d)61.

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.

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, insurer 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.

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.

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.

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.

Provision of the policy, that it shall not cover "injuries of which there is no visible contusion or wound on the exterior of the body of the insured," being an exception to coverage clause, should be given a reasonable and practical, but liberal construction as to insured. General rule is for strict construction as against the insurer. Cavallero v. T., 197M417, 267NW370. See Dun. Dig. 4871b.

Provisions reducing indemnity in case of infection "from any injury, abrasion, bruise, or laceration" held not to apply. Mair v. M., 198M145, 269NW364. See Dun. Dig. 4871a.

Group health and accident policy provided for by Laws 1939, c. 146, amending §3415, should contain only such stand provisions of this section as are applicable. Op. Atty. Gen. (249B-8), June 22, 1939.

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.

Where accident insurer retained proofs of loss and denied all liability under policy, it may not complain of insufficiency of proofs of loss. Jorstad v. B., 196M568, 265NW814. See Dun. Dig. 4875.

Under health insurance policy requiring written notice of sickness be given within ten days after commencement of disability from sickness, notice of sickness given more than ten days after it wholly and continuously disabled insured does not forfeit whole claim, but only that part thereof that had accrued up to ten days prior to notice to defendant. Barron v. E., 197M367, 266NW845. See Dun. Dig. 4874c.

A waiver of terms of a contract of insurance may consist in doing of some act which is inconsistent with an intention to insist on a strict performance, or a course of conduct inconsistent with and in disregard of terms of contract. Lepak v. C., 198M134, 269NW89. See Dun. Dig. 4676, 4874c, 10134.

Recovery on policy of accident insurance denied for failure to give timely notice of loss which was prerequisite to right of recovery. Id. See Dun. Dig. 4782.

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.

Evidence did not make out defense that insured had not given insurer an opportunity to examine him during pendency of claim. Barron v. E., 197M367, 266NW845. See Dun. Dig. 4874d.

In action for death under accident policy, burden of proof was on insurer on issue of demand for and refusal to permit an autopsy, and on issue raised by claim that there was no liability because there was no visible contusion or wound on exterior of body of insured, an exception to the coverage clause. Cavallero v. T., 197M417, 267 NW370. See Dun. Dig. 4738, 4871b.

Evidence is insufficient to justify jury in finding in defendant's favor on issue of demand for and refusal to permit an autopsy. Id. See Dun. Dig. 4875.

In a suit upon an accident policy where there is no evidence as to how the external violence which caused the death was inflicted there is a presumption that the means were accidental. Krema v. G., 204M186, 282NW 822. See Dun. Dig. 4874b.

A physician's death certificate is not conclusive as to cause or contributory cause of death and may be contradicted or explained by evidence. Id. See Dun. Dig. 4874b.

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.

It is for jury to determine facts where medical experts give contradictory opinions as to cause of death. Jorstad v. B., 196M568, 265NW814. See Dun. Dig. 4740.

Whether death was proximate result of alleged accidental injuries, directly and independently of all other causes, was for jury. Cavallero v. T., 197M417, 267NW 370. See Dun. Dig. 4871b.

Question of occurrence of an accident from which insured is alleged to have died, held for jury. Mair v. M., 198M145, 269NW364. See Dun. Dig. 4871a.

Whether chronic interstitial nephritis was a contributing cause of death of insured held for jury. Id. See Dun. Dig. 4873.

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.)

A hospital group policy held to violate this section. Op. Atty. Gen. (249b-9), Jan. 26, 1939.

(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 plan 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 certificate 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.

3443. Commercial Traveler insurance company may give prizes.—Any domestic assessment, health or accident association now licensed to do business in this state, which confines its membership to commercial travelers, professional men, and others whose occupation is of such character as to be ordinarily classified as no more hazardous than commercial travelers, and which does not pay any other commissions or compensation, other than prizes to members of nominal value in proportion to the membership fees charge for securing new members, may issue certificates of membership, which, with the application of the member and the by-laws of the association shall constitute a contract between the association and the member. A printed copy of the by-laws and a copy of the application shall be attached to the membership certificate when issued, and a copy of any amendment to the by-laws shall be mailed to the members following their adoption. Certified copies of certificate, by-laws and amendments shall be filed with the commissioner of insurance and subject to his approval. The by-laws shall conform to the requirements of Laws 1913, Chapter 156 [3415 to 3427], so far as applicable, and wherever the word "policy" appears in said act, it shall, for the purpose of this act, be construed to mean the contract as herein defined. (As amended Apr. 13, 1939, c. 216.)

MUTUAL BENEFIT ASSOCIATIONS

3444. Employers who made deductions from wages of employees' funds must secure license.

In action by employee against employee's benefit association, evidence held to show that plaintiff suffered disability because of intoxication. Holdys v. S., 198M258, 269 NW468. See Dun. Dig. 4831a.

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.)

See Act Apr. 24, 1937, c. 406.

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 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.

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.)

Reimbursement of deposit fund may only be paid out of moneys in expense account and not out of reserve account. Op. Atty. Gen. (249a-8), July 30, 1937.

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 for 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.)

The six-dollar limitation per member per annum for assessments or expenses does not apply to funds voted and assessed for reimbursement of statutory deposits. Op. Atty. Gen. (249a-8), July 30, 1937.

3445-11. May divide membership into groups.—Any association heretofore or hereafter formed un-

der 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.)

Reimbursement of deposit fund may only be paid out of moneys in expense account and not out of reserve account. Op. Atty. Gen. (249a-8), July 30, 1937.

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 lifetime 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.)

An incorporated benevolent society is authorized to divide its membership into units, and, if permitted by its by-laws, a member of one unit may be a member of another unit. Olson v. G., 203M267, 281NW43. See Dun. Dig. 4822.

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.)

Validity and effect of exemptions from claims of creditors. 22MinnLawRev1052.

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, stationery, 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.

3445-23a. Exceptions.—The provisions of this chapter shall not apply to the operations or charitable activities of any religious society, religious association or religious corporation, which does not assume any definite contractual obligations with any of its members or others, and not charging any stipulated premiums, and which does not engage in any insurance business. (Added Apr. 21, 1937, c. 320, §1.)

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.)

3445-25. Assessment benefit associations may reinsure.—Five or more duly licensed assessment benefit associations organized and doing business in Minnesota under Laws 1933, Chapter 241, and in a manner approved by the commissioner of insurance of the state of Minnesota, may organize a mutual association for the purpose of reinsuring the risks or any part or portion of the risks of any assessment benefit association in such amount upon such terms and conditions and for such consideration as shall be authorized by the by-laws of such reinsurance association. Reinsurance contracts under this act shall cover risks lawfully existing and assumed by assessment benefit associations at the time when such contracts of reinsurance are made with assessment benefit associations, whose method of doing business shall have been approved by the commissioner of insurance of the state of Minnesota. (Act Apr. 24, 1937, c. 406, §1.)

3445-26. Conditions of contract.—Any such association organized and authorized to reinsure risks of assessment benefit associations doing business pursuant to said Laws 1933, Chapter 241, may enter into contracts of reinsurance on complying with the following minimum conditions:

(a) The reinsurance association and the insured assessment benefit association shall each be upon the date of the contract of reinsurance duly licensed to transact business in the state, and the insured assessment benefit association shall be one which transacts its business in this state in a manner approved by the commissioner of insurance.

(b) Each contract of reinsurance shall be submitted to and be approved by the commissioner of insurance of Minnesota before it shall become effective.

(c) Each contract of reinsurance shall have been approved by a majority vote of all directors of each of the parties thereto at meetings of the directors of each association held in accordance with the by-laws of each.

(d) Such business of reinsurance shall be conducted without profit to its members. (Act Apr. 24, 1937, c. 406, §2.)

3445-27. Incorporation—Articles of incorporation.—The incorporation of any such reinsurance association shall be effected by filing with the commissioner of insurance the original, and recording a duplicate thereof in the office of the register of deeds of the county in which the principal office of such association is located. Articles of association duly executed by the assessment benefit associations forming such reinsurance association, and shall be duly acknowledged by at least three of the member assessment benefit associations so executing said articles. Before such reinsurance association shall be authorized to do business in this state it shall be made to appear of record that each assessment benefit association forming such reinsurance association shall have been fully authorized by resolution adopted at a regular annual meeting or at a special meeting called for that purpose to join in forming such reinsurance association and that the articles of association have been approved by the commissioner of insurance.

Said articles of association shall state in the English language:

(a) Its purposes.

(b) Its location and postoffice address of its principal place of business.

(c) Names, postoffice addresses and terms of office of the first board of directors.

(d) Name and postoffice address of each assessment benefit association constituting the incorporators thereof.

(e) Any other provisions consistent with the provisions of this act and the provisions of Laws 1933, Chapter 241, regulating the business of such reinsurance association. (Act Apr. 24, 1937, c. 406, §3.)

3445-28. Members may withdraw.—Any member assessment benefit association of such reinsurance association may withdraw from membership upon giving ninety days' notice of its intention so to do, when such withdrawal has been authorized by a majority vote of its members present and voting at a regular meeting or at a special meeting called for that purpose. Such withdrawal shall not in any manner affect its liabilities for any dues or losses which have accrued or shall have been incurred prior to the effective date of such withdrawal. (Act Apr. 24, 1937, c. 406, §4.)

3445-29. Officers and directors.—The directors of such reinsurance association shall be chosen from the officers of its member assessment benefit associations but no member assessment benefit association shall have more than one of its officers serving as an officer of such reinsurance association. At the first meeting of such reinsurance association it shall adopt by-laws

which shall be filed with the commissioner of insurance and which shall be effective from and after the date of their approval by him. The corporate existence of such reinsurance association may be made perpetual by so providing in the articles of association. (Act Apr. 24, 1937, c. 406, §5.)

3445-30. Membership dues and assessments.—Member assessment benefit associations of such reinsurance association and assessment benefit associations contracting with such reinsurance association shall each year pay to the treasurer thereof such membership dues, assessments and fees as may be fixed or authorized by its by-laws and its contracts of reinsurance for the purpose of accumulating the necessary funds required to perform its functions and discharge its contract obligations so as to afford mutual financial strength among the licensed assessment benefit associations authorized to do business in this state and to secure protection to the individual certificate holders of such assessment benefit associations. (Act Apr. 24, 1937, c. 406, §6.)

3445-31. Association to file annual statement.—Every reinsurance association organized under this act shall file with the commissioner of insurance an annual statement and such other reports as he may reasonably require. So far as applicable, the provisions of Laws 1933, Chapter 241, shall govern the supervision and administration of such reinsurance association. (Act Apr. 24, 1937, c. 406, §7.)

3445-32. Fees.—There shall be paid by such reinsurance association to the commissioner of insurance and by him accounted for to the state of Minnesota the following fees:

For filing certificate of association	$2.00
Filing annual statement	1.00
Certificate of authority annually	1.00

It shall pay to the register of deeds his proper fees for recording the duplicate of such articles of association. (Act Apr. 24, 1937, c. 406, §8.)

3445-33. Powers of association.—Every such association shall have power:

(a) To sue and be sued.

(b) To adopt, use and, at will, alter a corporate seal.

(c) To acquire, hold, lease, encumber, convey or otherwise dispose of real and personal property within the state and to take real and personal property by will or gift subject to any limitation prescribed by law or the articles of incorporation.

(d) To enter into contracts of reinsurance with assessment benefit associations and to do any act expedient for the attainment of the purposes stated in its articles of association as approved by the commissioner of insurance to effect the objects of this act and said Laws 1933, Chapter 241. No shares of stock shall be authorized. Each member association shall receive a certificate of membership as evidence of its membership in such reinsurance association. (Act Apr. 24, 1937, c. 406, §9.)

3445-34. To be under supervision of commissioner of insurance.—The certificate of association, by-laws, forms of contracts and policies of reinsurance adopted or issued by every such reinsurance association, and the general conduct of its affairs shall be subject to the general supervision and jurisdiction of the commissioner of insurance and such commissioner whenever requested by five or more members of such reinsurance association shall make an examination of the affairs thereof at its expense. Whenever after such examination, the Commissioner is satisfied that any such association has violated the law, has exceeded its powers, is not carrying out its contracts in good faith, is transacting business fraudulently, or is in such condition as to render further proceedings hazardous to the public or to its members, he may, after a hearing duly had, suspend the license of such association and present the facts relating thereto to the attorney general, who shall, if the circumstances warrant, commence action to enjoin such association from carrying on any further business and for the appointment of a receiver, who shall under the direction of the court proceed to close the affairs of such association and distribute its funds to those entitled thereto. (Act Apr. 24, 1937, c. 406, §10.)

3445-35. Limit of expenses.—No more than thirty cents out of every dollar received shall be used for expenses of such reinsurance association and the remainder shall be credited to a benefit fund which benefit fund shall be subject to the rules and regulations provided for by Laws 1933, Chapter 241. (Act Apr. 24, 1937, c. 406, §11.)

3445-36. Directors.—The number of directors shall not be less than five nor more than fifteen. (Act Apr. 24, 1937, c. 406, §12.)

Sec. 13 of Act Apr. 24, 1937, cited, provides that the Act shall take effect from its passage.

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), 5FSupp598. 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.

It does not invalidate provisions of labor organization with insurance feature that member must exhaust remedies within organization that only aggrieved member himself or some other member acting on his behalf is permitted to appear before tribunals of organization in any dispute. Skrivanek v. B., 198M141, 269NW111. See Dun. Dig. 4834.

Assumption by insurance company of obligations of a benefit certificate issued by a fraternal society does not change contract from one of fraternal insurance to one of ordinary insurance. United Mut. Life Ins. Co. v. W., 201M70, 275NW422. See Dun. Dig. 4820.

A divorced wife of an insured member cannot recover death benefits as assignee of beneficiary named in a fraternal insurance certificate. Id. See Dun. Dig. 4823.

There was no waiver of conditions for reinstatement of suspended member of fraternal benefit association by acceptance of delinquent dues by janitor of building occupied by local lodge, or by entry of payment on books after death of insured. Saltwick v. M., 202M343, 278NW 513. See Dun. Dig. 4842.

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

This section is constitutional. Op. Atty. Gen. (414d-8), May 11, 1936.

Office furniture and equipment and money and credits of Lutheran Brotherhood are tax exempt. Id.

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. Brotherhood of Railroad Trainmen v. Benson (DC-Minn), 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.

Where there is a revocation of designation of beneficiary in a fraternal beneficiary certificate, without effectual designation of a new beneficiary, certificate remains in force, and is payable to beneficiaries surviving deceased who are eligible as such under by-laws of insurer and controlling statute. Bambery v. A., 197M592, 268NW 200. See Dun. Dig. 4823, 4824.

A divorced wife of an insured member cannot recover death benefits as assignee of the beneficiary named in a fraternal insurance certificate. United Mut. Life Ins. Co. v. W., 201M70, 275NW422. See Dun. Dig. 4823.

Where member ordered certificate cancelled and a new one was issued naming a new beneficiary who was not eligible as such, former beneficiary was not entitled to proceeds of certificate, but they must be distributed to widow in accordance with by-laws. Modern Woodmen v. K., 203M508, 282NW133. See Dun. Dig. 4824.

3453. Medical examination—Age of admission to fraternal beneficiary societies.—No association shall admit to beneficial membership any person less than sixteen (16) nor more than sixty (60) years of age, nor any person who has not been examined by a legally qualified practicing physician and whose examination has not been approved by the supervising medical authority of the association as provided by the laws of the association; provided, however, that in lieu of the medical examination above required, a declaration of insurability may be accepted by the association on an applicant under 45 years of age and for benefits not exceeding $2,500; provided further that such examination or declaration of insurability shall not be required of associations paying only accident or sick benefits, or funeral benefits not exceeding $300. (As amended Apr. 22, 1939, c. 411, §1.).

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.

3455. Medical examination and certificate—Number of members—Mortality tables— Rate of interest—Contributions.—No benefit certificate as to any child shall take effect until after medical examination by a licensed medical practitioner, or other acceptable evidence of insurability in accordance with the laws of the association, nor shall any such benefit certificate be issued unless the association shall simultaneously put in force at least five hundred such cer-

tificates, on each of which at least one assessment has been paid, nor where the number of lives represented by such certificate falls below five hundred. The death benefit contributions to be made upon such certificate shall be based upon the "Standard Industrial Mortality Table" or the "English Life Table Number Six", and a rate of interest not greater than four per cent per annum, or upon a higher standard; *provided, that contributions may be waived or returns* may be made from any surplus in excess of reserve and other liabilities, as provided in the by-laws, and provided further, that extra contributions shall be made if the reserves hereafter provided for become *impaired. (As amended Apr. 22, 1939, c. 411, §2.)*

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 bonds of the United States, bonds of the State of Minnesota or any state of the United States, or of the Dominion of Canada or any province thereof, 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, 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 per cent 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 50 per cent of the actual cash value thereof at the time of making the loan, unless such loans are on an amortized basis, where by reason of monthly payments the loan is paid off in not to exceed 20 years, then such loans may be based on 60 per cent of the actual cash value thereof; 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; Apr. 8, 1939, c. 166.)

3465. Benefits exempted from process—Tax exemption.

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

Payment of death benefits into court by insurer to *permit adverse claimants to litigate their claims to fund* does not operate as a waiver of provisions of statutes and certificate which render assignment and pledge of certificate unenforceable. United Mut. Life Ins. Co. v. W., 201M70, 275NW422. See Dun. Dig. 4828.

A pledge of a fraternal insurance certificate by insured member to secure payment of a debt owing by member to pledgee is unenforceable. Id.

A pledge otherwise unenforceable is not rendered valid because the pledgee was eligible to be named beneficiary in the certificate. Id.

One who pays premiums by which a certificate of fraternal insurance is kept in force does not acquire there*by an equitable lien on proceeds of certificate.* Id.

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.

This section is constitutional. Op. Atty. Gen. (414d-8), May 11, 1936.

Office furniture and equipment and money and credits of Lutheran Brotherhood are tax exempt. Id.

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.)

3469. Merger to be approved by commissioner of insurance.—When any such fraternal benefit society shall propose to consolidate or merge its business, or to enter into any contract or reinsurance, or to assume or reinsure the whole or any portion of the risks of any other fraternal benefit society, the proposed contract in writing setting forth the terms and condi-

tions of such proposed consolidation, merger or reinsurance shall be submitted to the legislative or governing bodies of each of said parties to said contract after 30 days' written notice by mail is given to all policy holders, stating the object of the meeting, and if approved by such legislative or governing bodies by a two-thirds vote, such contract, if so approved, shall be submitted to the commissioner of insurance of this state for his approval, and the parties to said contract shall at the same time submit a sworn statement showing the financial condition of each of such fraternal benefit societies as of the 31st day of December preceding the date of such contract; provided that such insurance commissioner may within his discretion require such financial statement to be submitted as of the last day of the month preceding the date of such contract. The commissioner of insurance shall thereupon consider such contract of consolidation, merger or reinsurance, and if satisfied that the interests of the certificate holders of such fraternal benefit societies are properly protected, and that such contract is just and equitable to the members of each of such societies and that no reasonable objection exists thereto, shall approve said contract as submitted. In case the parties corporate to such contract shall have been incorporated in separate states, or territories, such contract shall be submitted as herein provided to the commissioner of insurance of each of such incorporating states, or territories, to be considered and approved separately by each of such commissioners of insurance. When said contract of consolidation, merger or reinsurance, shall have been approved as hereinabove provided, such commissioner or commissioners of insurance shall issue a certificate to that effect, and thereupon the said contract of consolidation, merger or reinsurance shall be in full force and effect. In case such contract is not approved the fact of its submission and its contents shall not be disclosed by the commissioner of insurance. (As amended Apr. 21, 1937, c. 309, §1.)

3470. Payment of expenses.
Section cannot properly be construed to require an attorney, employed in merging two fraternal beneficiary associations, to secure from insurance commissioner approval of his bill for such services as a condition precedent to suit, prohibition of statute being against merged associations and their officers. Kolars v. D., 197M183, 266NW706. See Dun. Dig. 4820.

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, 224NW864.

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.

Obligation of an insurer is to be ascertained from terms of policy, and cannot be enlarged or varied by judicial construction, and terms of policy are to be taken, in absence of ambiguity, in their plain, ordinary, and popular sense. Millers' Mut. Fire Ins. Ass'n v. W., (CCA 8), 94F(2d)741.

It is only where there is doubt as to meaning of terms used or where writing is silent or incomplete in some regard that a court interpreting a contract will resort to practical construction which parties have placed upon it. Id.

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.

Recoverage against direct loss caused by sprinkler leakage, wind and hail, explosion, riot and civil commotion, and aircraft damage cannot be included in a fire policy. Op. Atty. Gen. (252j), Jan. 6, 1936.

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.

Rule that an ambiguous provision of an insurance policy is to be construed most favorably for the insured cannot be availed of to refine away terms of a contract expressed with sufficient clearness to convey the plain meaning of the parties. Millers' Mut. Fire Ins. Ass'n v. W., (CCA8), 94F(2d)741.

Fire insurance policy to potato growers' association to cover potatoes in warehouse "if in case of loss the insured is legally liable therefor," did not cover potatoes stored in warehouse by members of association. Id.

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.

Evidence held to sustain finding that parties intended to insure hoghouse for $500 in a fire policy but that through mutual mistake hoghouse was omitted and such $500 was placed on dwelling house, justifying reformation of policy and recovery thereon. Keogh v. S., 195M 575, 263NW601. See Dun. Dig. 4652a.

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.

Evidence held to sustain finding that persons connected with insured deliberately padded proof of loss and inventory, rendering fire policy void for fraud. Foot v. Y., 286NW400. 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.

Incendiary origin of fire does not void policy unless traceable to insured. Foot v. Y., 286NW400. See Dun. Dig. 4779.

In action on fire policy covering stock of goods evidence held to sustain finding that fire was incendiary. Id. 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.

Where only testimony of extent of fire damage was that of an adjuster showing an adjustment which was result of a compromise, there was no evidence which would sustain a judgment as to actual loss, requiring a new trial. Olszewski v. S., 203M333, 281NW267. See Dun. Dig. 4791.

Burden is upon insured to prove loss under fire policy. Foot v. Y., 286NW400. See Dun. Dig. 4781a.

In action on fire policy for loss of stock of goods competent proof was required of value of property insured in store at time fire broke out and value thereof after it was extinguished. Id. See Dun. Dig. 4781a.

10. Arbitration.
The provision of arbitration is not unconstitutional. Hardware Dealers' M. F. I. Co. v. Glidden Co., 284US 151, 52SCR69, 76LEd214, aff'g 181Minn518, 233NW310. See Dun. Dig. 4793.

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. Aff'd, 284US151, 52SCR69, 76LEd214. 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.

Liability is not determined by the arbitrators but they are limited to ascertainment of amount of loss. Minnesota Farmers Mut. Ins. Co. v. S., 204M101, 282NW658. See Dun. Dig. 4794.

Where insurer did not give notice of appointment of an appraiser until 14 days after proof of loss, insured had a reasonable time in which to appoint an appraiser and was not bound by the 15-day limitation. Id. See Dun. Dig. 4794.

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.

Evidence held to sustain finding that parties intended to insure a hoghouse for $500 in a fire policy but that through mutual mistake hoghouse was omitted and such $500 was placed on dwelling house, justifying reformation of policy and recovery thereon. Keogh v. S., 195 M575, 263NW601. See Dun. Dig. 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

3535. Mutual companies—When permitted.

It is not permissible for one mutual company and two reciprocal companies to form a new reinsurance corporation. Op. Atty. Gen. (249h-16), Dec. 16, 1936.

Municipalities may purchase insurance from mutual companies provided there is a limitation upon liability of members and contingent liability is within maximum indebtedness of municipality. Op. Atty. Gen. (487c-1), August 23, 1939.

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

3538. Premiums—Contingent liability.

A city or town may insure property in a mutual company so long as policy will not create a contingent liability which might exceed statutory limit of indebtedness of municipality. Op. Atty. Gen. (476b-9), May 24, 1937.

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 insurance 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 consoli-

date 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.)

It is not permissible for one mutual company and two reciprocal companies to form a new reinsurance corporation. Op. Atty. Gen. (249h-16), Dec. 16, 1936.

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.

RECIPROCAL OR INTERINSURANCE EXCHANGES

3587. Reciprocal or interinsurance contracts.

Reciprocal or interinsurance exchange may be adjudicated an involuntary bankrupt. In re Minnesota Ins. Underwriters (DC-Minn), 36F(2d)371.

Bank may not purchase common stock of casualty company. Op. Atty. Gen. (29a-28), Apr. 24, 1936.

It is not permissible for one mutual company and two reciprocal companies to form a new reinsurance corporation. Op. Atty. Gen. (249h-16), Dec. 16, 1936.

A reciprocal may limit liability of its subscribers for additional funds, and may issue policies which do not contain provisions for making up any deficiency by addition payments by subscribers, and may set up various classes of subscribers on some of which there is no additional premium liability, others where additional premium liability is limited to one additonal premium, and others where additional premium liability is unlimited, but reciprocals are not authorized to give rebates or to discriminate unfairly between classes or risks. Op. Atty. Gen. (249B-16), April 15, 1939.

3594. Exchange of contracts.

Bank may not purchase common stock of casualty company. Op. Atty. Gen. (29a-28), Apr. 24, 1936.

3595. Misdemeanor for failure to comply.

Agreement between unincorporated association and another insuring against loss or damage to automobile and giving bail and legal services in civil and criminal actions, tow service, roadside repairs and mechanical advice, was a contract of insurance. Op. Atty. Gen., (249a-7), Aug. 1, 1935.

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 contents 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.

Soldiers' Home Board may not contract for boiler insurance. Op. Atty. Gen. (252k), Jan. 22, 1937.

Insurance purchased by department of rural credits must be purchased on a contract open to public bidding as provided by reorganization act. Op. Atty. Gen. (770c), July 13, 1939.

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.

A policy of compensation insurance to "A. F. Peavey, doing business as the Northwestern Sand Blast Company," issued after Peavey had taken a partner into business with him, Northwestern Sand Blast Company being maintained as partnership name, intention was to protect all employees working under that firm name. Moreault v. N., 199M96, 271NW246. See Dun. Dig. 10391.

Contract of sale and installation of an air conditioning system, providing "price herein includes cost of workmen's compensation," could be construed as alleged in complaint to include requirement that compensation insurance cover employees of buyer of system while assisting in installing it, as affecting demurrer to complaint of regular insurance carrier of buyer, proper construction of contract being a matter to be determined upon evidence at trial. Anchor Casualty Co. v. C., 273NW647. See Dun. Dig. 7542(51).

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.

A stock insurance company cannot issue a policy containing a provision entitling policy holders to participate in profits as apportioned by directors. Op. Atty. Gen. (517c), Dec. 10, 1938.

Participating clause in policies issued by stock company is valid. Op. Atty. Gen. (517c), June 1, 1939.

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 insur-

ance 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.

A stock insurance company cannot issue a policy containing a provision entitling policy holders to participate in profits as apportioned by directors. Op. Atty. Gen. (517c), Dec. 10, 1938.

Participating clause in policies issued by stock company is valid. Op. Atty. Gen. (517c), June 1, 1939.

3634-1. Insurors required to take certain risks—Refusal to write—Statement.—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 member of said bureau, in the manner herein provided. The member of the bureau or any agent of such member refusing to write such insurance when the applicant has made written application for insurance, shall forthwith furnish the applicant for insurance a written statement of such refusal, and said member of the bureau or any agent of such member to whom written application has been made shall forthwith file a copy of such refusal with the rating bureau. The Commissioner of Insurance may revoke the license of such member or agent for refusal or failure to give such refusal in writing. The Commissioner of Insurance shall notify all members of the bureau now licensed to write insurance and such companies as may hereafter become members of the bureau after the passage of this act, of the provisions of this section. (Apr. 18, 1929, c. 237, §1; Apr. 8, 1937, c. 175, §1.)

Sec. 2 of Act Apr. 8, 1937, cited, provides that the Act shall take effect from its passage.

A policy of compensation insurance to "A. F. Peavey, doing business as the Northwestern Sand Blast Company," issued after Peavey had taken a partner into business with him, Northwestern Sand Blast Company being maintained as partnership name, intention was to protect all employees working under that firm name. Moreault v. N., 199M96, 271NW246. See Dun. Dig. 10391.

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.)

Compensation Insurance Bureau does not have the power to substitute a new insured and a new risk in existing policies of insurance previously issued as assigned risks under statute. Yoselowitz v. P., 201M600, 277NW221. See Dun. Dig. 7998.

Compensation Insurance Bureau's authorization issued to it by insurers pursuant to requirements of statute is simply to act for insurers in their behalf as provided in act. Id.

Where an employer is entitled to a designation of an insurance carrier, he can compel designation by the compensation insurance bureau by mandamus. Id. See Dun. Dig. 10390.

Where new corporation was formed taking over business of several old corporations and employee of old corporation worked for new corporation with knowledge of the fact, he must recover his compensation for injuries from new corporation and not old corporation, and insurance carrier of old corporation would not be liable. Id.

A reimbursement rider to a workmen's compensation policy is valid. Maryland Casualty Co. v. A., 204M43, 282 NW806. See Dun. Dig. 10391.

Participating clause in policies issued by stock company is valid. Op. Atty. Gen. (517c), June 1, 1939.

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.)

Evidence held not to justify invocation of doctrine of estoppel on question of relationship of president to his corporation, though insurance premium was based on payroll. Hansen v. T., 201M216, 275NW611. See Dun. Dig. 10391.

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

3635. Town companies—Property insurable.

In view of repealing clause contained in Laws 1909, c. 411, §28, it is extremely doubtful whether §§3635 to 3645 are longer in effect. Op. Atty. Gen. (487a-3), Oct. 17, 1938.

Distinction between town, township, county and state farmers' mutual insurance companies is territorial, and nature of business is same. Id.

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 twenty-five (125) 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; Apr. 21, 1937, c. 316, §1.)

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

Sec. 2 of Act Apr. 21, 1937, 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.

A company can refuse to issue policies of insurance in villages of under 1,000 inhabitants and limit its business to property in township, but company cannot discriminate against its policyholders living in a village. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

Township mutual insurance companies are under supervision of insurance deartment. Id.

Distinction between town, township, county and state farmers' mutual insurance companies is territorial, and nature of business is same. Op. Atty. Gen. (487a-3), Oct. 17, 1938.

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.

Township mutuals are not limited or restricted as to amount of insurance they may carry on one risk. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

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.

3656. Board of directors—Eligibility of members—Woman member may give proxy.—Every company shall choose of their members not less than five and not more than nine directors, to manage the affairs of the company, who shall hold their office for such period as may be fixed by the by-laws of the company, not exceeding three years, and until their successors are elected and qualified, such directors shall choose one of their number as president, one as vice president, and one as secretary; they shall also choose a treasurer who may or may not be a member of said board, but must be a member of the company; provided, however, that the offices of secretary and treasurer may be held by the same person. The certificate or articles of incorporation of such company may provide that the president, vice president, secretary and treasurer may be chosen by the direct vote of the members of the company at the annual meeting.

In such case the election of such persons as president, vice president and secretary shall constitute the members of said board of directors, and the remaining members of said board shall be elected as above provided.

Every woman being a member of any such insurance company may be represented at any regular or special meeting of the members thereof by any person duly appointed in writing as her proxy, and such proxy so appointed shall have full power to represent such member as fully as if she were personally present at such meeting. (As amended Apr. 13, 1939, c. 235.)

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.

Statutes relative to agent's licenses do not apply to township mutual insurance company. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

Township mutual insurance companies are not obliged to use a standard fire policy, and there is no restriction on wording of policies they may use. Id.

A city or town may insure property in a mutual company so long as policy will not create a contingent liability which might exceed statutory limit of indebtedness of municipality. Op. Atty. Gen. (476b-9), May 24, 1937.

3661. Against fire or lightning only.
There can be no recovery for a fire loss occurring after expiration of a policy of insurance, issued by a township mutual fire insurance company, on theory that by-laws by imposing upon secretary duty to notify insured of expiration, and upon other officers duty to solicit a renewal, created any duty to insured. Pinske v. G., 197M444, 267NW263. See Dun. Dig. 4745.

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.)

There is no requirement as to amount of funds that township mutual must have on his hands to pay losses, and this section is not mandatory. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

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.

3664. President and secretary may accept applications.
Statute seems to classify president as a "resident agent", as affecting venue of actions. Ceska Farmarska Vzajemne Pojistujici S. v. P., 203M597, 279NW747. See Dun. Dig. 10110.

Director of a township mutual fire insurance company acting individually has no greater powers than that possessed by any duly authorized soliciting agent of corporation. State v. Gislason, 203M450, 281NW769. See Dun. Dig. 4704.

3665. Classification of property.
Section applies to ordinary mutual fire insurance company. Op. Atty. Gen., June 1, 1933.

Township mutuals may not limit liability of members for losses and expenses. Op. Atty. Gen. (249b-13), Mar. 10, 1937.

3666. Losses—Adjustment.
Statute seems to classify president as a "resident agent", as affecting venue of actions. Ceska Farmarska Vzajemne Pojistujici S. v. P., 203M597, 279NW747. See Dun. Dig. 10110.

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 TOWNSHIP 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.)

It is not permissible for one mutual company and two reciprocal companies to form a new reinsurance corporation. Op. Atty. Gen. (249h-16), Dec. 18, 1936.

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.)

MUTUAL BURGLARY AND THEFT INSURANCE COMPANIES

3701. Formation or admission—Conditions.
Where pretending purchaser substituted worthless piece of glass for a costly diamond in presence of manager and threatened action for damages when manager protested that substitute was not diamond shown, and left the store, there was a taking of property within robbery insurance policy. Citizens Loan & Investment Co. v. S., 195M515, 263NW541. See Dun. Dig. 4875k.

TITLE INSURANCE COMPANIES

3703. Real estate title insurance companies.
A title insurance company whose income is derived from interest on its investments as well as from making and sale of abstracts and from title insurance premiums is not required to pay moneys and credits and general personal property taxes in addition to those imposed upon it as a title insurance company. State v. Title Ins. Co., 197M432, 267NW427. See Dun. Dig. 9658.

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 occurring 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.

Where a defalcation occurs on the part of an officer who has succeeded himself as such for one or more terms and has given different bonds assuring his fidelity to his trust, liability falls upon bondsmen who were such at time of defalcation; but prima facie sureties on last bond are liable for such funds as are properly chargeable to officer, as shown by books of his office at time of his retirement, and burden is upon such sureties to show that defalcation in fact occurred during a prior term. Lac Qui Parle Town Farmers U. F. I. Co. v. R., 195M402, 263NW455. See Dun. Dig. 4875q, 9105.

Where there is a continuing suretyship for faithful discharge of duty, if employer discovers that his employee or agent has been guilty of dishonesty in course of service, and thereafter continues him in such service without notice to and assent of surety, express or implied, to such course, latter is not liable for any loss arising from such dishonesty during such subsequent service; but mere negligence of an employer in failing to discover defaults of his employee or agent will not ordinarily discharge surety. Id.

Person insured is charged with notice of his policy when he accepts it, and he is bound by its conditions, if he retains it without objection, unless he be misled by insurer. Hayfield Farmers Elevator & Mercantile Co. v. N., 203M522, 282NW265. See Dun. Dig. 4658(78).

Insured under a fidelity policy issued cannot deny delivery where policy was actually delivered to and retained by representative through whom policy was applied for. Id.

A waiver is a voluntary act, and there must be an intent to waive a known right before it becomes of binding effect, expressed directly or inferred from conduct or declarations. Id. See Dun. Dig. 4679(85).

Fidelity bonds issued by compensated bonding companies are now regarded as policies of insurance, in substance, and are governed, for most part at least, by law of insurance rather than law of suretyship. Id. See Dun. Dig. 9107b.

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 181M518, 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.)

Section 1919 is still in force and was not repealed by §3723. Op. Atty. Gen. (688j), Aug. 17, 1937.

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.*

Upon incorporation of a fireman's relief association 2% gross premium fund may be turned over to treasurer of such association upon his filing a proper bond. Op. Atty. Gen. (198h-11), Oct. 21, 1936.

Commissioner of administration has no power under laws 1939, c. 431, art. II, §16, to reduce expenditure for aid to fire departments. Op. Atty. Gen. (640a), Sept. 2, 1939.

3726. Special fund—disbursements—payments to relief associations.—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 authorized by such municipality.

But if there shall be a duly incorporated fire department relief association in such municipality, such amount shall be paid to the treasurer of said relief association, and by him deposited in the special fund of said association, and disbursed as other special funds. (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; 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 however he received his injury. Id.

Funds acquired from taxes cannot be used to purchase group insurance, but moneys received from fees, dues, donations, etc., may be used for any purpose. Op. Atty. Gen. (198b-10(d)), Nov. 1, 1935.

Funds acquired pursuant to this section may not be expended for flowers at funeral of deceased member. Op. Atty. Gen. (198b-10), Nov. 29, 1935.

Funds may be used to purchase rubber boots and coats for use of firemen in fighting fires, but not for sheepskin coats to be worn at all times. Op. Atty. Gen. (198b-10(e)), Dec. 13, 1935.

By-laws may provide for pensions to widows of firemen whose death does not occur in line of service. Op. Atty. Gen. (688m), Jan. 9, 1936.

Funds of relief association which are derived from 2% taxation by fire insurance companies may be used for improvement of firemen's quarters, but moneys derived from tax levy of one-tenth of a mill upon taxable property in municipality may be used only for purposes specified in §1920. Op. Atty. Gen. (198b-10(a)), Feb. 24, 1936.

Funds are not public funds and members of relief association by a three-fourth's vote may surrender bonds bearing 6% and accept in lieu thereof new bonds at lesser rate of interest and may waive premiums to which association would be entitled for bonds called for payment before maturity. Op. Atty. Gen. (198h-5), Apr. 7, 1936.

Expenses incident to sending volunteer firemen to Regional Firemen's Training Schools may be out of fire gross premium tax. Op. Atty. Gen. (688j), June 2, 1936.

Association may invest its funds in village certificates of indebtedness. Op. Atty. Gen. (59a-51), Nov. 20, 1936.

Depositary is not required to furnish bond as security for funds of Firemen's Relief Association. Op. Atty. Gen. (198b-2), Jan. 7, 1938.

Where active member of International Falls fire department became ill and was placed on "disability list", and was dropped as an "active member", and no longer paid any dues, his widow on his death was not entitled to benefits as widow of "active member". Op. Atty. Gen. (198a-1), Apr. 27, 1938.

It is within discretion of governing body of municipality to lend money to fire department to buy uniforms and take a plain unsecured note therefor. Op. Atty. Gen. (198b-5), May 6, 1938.

Statute does not prohibit amendment of articles of incorporation of a relief association so as to authorize payment of benefits to widows of nonactive members who

have died prior to amendment. Op. Atty. Gen., (198a-1), July 13, 1938.

(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.

(4).

Where member of city of Virginia fire department relief association left department but was granted leave of absence to enable him to fill out his seven years of service with the department "and acting membership in the association," and died while on leave of absence, his beneficiary was entitled to all benefits, and association may make a present cash payment from special and general funds in settlement and relinquishment of claim, according to constitution and by-laws of association. Op. Atty. Gen. (198a-1), Mar. 12, 1937.

Lump sum pension may be paid to widow and orphans of a fireman in event such pension is provided for in articles or by-laws of association and authorized by municipality. Op. Atty. Gen. (198a-1), Sept. 28, 1937.

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 1920, and 3723 to 3728, inclusive, or any amendments thereof, such fire department relief association, when its special fund as shown by the secretary's annual report shall have reached the sum of $65,000, may pay retirement pensions in excess of the amounts authorized by such statutes, but not in excess of the following total amounts: a basic pension of $75.00 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 $3.00 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 $96.00 per month. (Act Apr. 11, 1935, c. 153, §1; Apr. 22, 1939, c. 434, §1.)

3728-2. Same—Restrictions—Change of classification of city.—(a) 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.

(b) In the event any relief association shall qualify under the terms of this act it shall continue thereunder notwithstanding any subsequent change in classification or valuation of the city in which it is located. (Apr. 11, 1935, c. 153, §2; Apr. 22, 1939, c. 434, §2.)

3728-3. Sources of revenue—Deductions from pay—Levy of tax—Non-existence or dissolution of association.—In addition to the moneys in the special fund of said association or provided to be raised therefor under existing laws for the payment of pensions and other benefits, revenues from the following sources shall be paid to said special fund, to-wit:

(a) It shall be the duty of the city clerk, treasurer, or other disbursing officer of such city to deduct each month from the monthly pay of each member of the fire department who is a member of the relief association a sum equal to ~~two~~ per cent of the above mentioned basic monthly pension, and pay the same to the treasurer of the relief association for credit in the special fund of said association.

(b) The city council or other governing body of such city shall each year, whenever the annual statement of the secretary of said relief association shows a sum existing in the special fund of less than $65,-

000, at the time the tax levies are made for the support of the city, and within the per capita limitations provided by law, levy a tax of one-tenth of a mill on all the taxable property of such city. The tax so levied shall be transmitted to the auditor of the county in which the city is situated at the time all other tax levies are transmitted, and shall be collected and payment thereof enforced in like manner as state and county taxes are collected and the payment thereof enforced.

(c) The city treasurer, when the tax is received by him, shall pay the same over to the treasurer of the duly incorporated firemen's relief association of such city, if there is one organized, together with all penalties and interest collected thereon: but if there is no firemen's relief association so organized in any such city, or if any such association resign, be dissolved or removed, or any successor of such association resign, be removed or has heretofore resigned or has been removed as trustee of such money, then the treasurer of such municipality shall keep the money in a special fund to be disbursed only for the purpose authorized by this act. (Added to Act Apr. 11, 1935, c. 153, by Act Apr. 22, 1939, c. 434, §3.)

3728-4. Secretary shall make report of money or property donated.—The said secretary of said association shall file annually on or before the first day of September of each year with the city clerk a detailed report of the amount of money or property so received, expended, and still remaining on hand to the credit of said fund. The books and records of said association shall be open to inspection and audit by any taxpayer of said city or his duly authorized representative. (Added to Act Apr. 11, 1935, c. 153, by Act Apr. 22, 1939, c. 434, §4.)

3728-5. Pensions not subject to judicial process.—No pension allowed or to be allowed by any firemen's relief association under this act, and no accumulated contributions of members to the fund hereinafter referred to, shall be subject to judgment, garnishments, or executions or other legal process, and no person entitled thereto shall have any right to assign the same, nor shall the association have the power to recognize any attempted assignment or pay over any sum whatever, which has been assigned or attempted to be assigned. The association shall have the right to cancel or suspend any pension or reduce the amount thereof during such time as the person otherwise entitled thereto is receiving a pension in any form from any municipal or other subdivision of the State of Minnesota, or is regularly receiving income from a business of employment. But no pension shall be reduced below the amount which, when added to the income from such other pension, business or employment, equals the monthly pension to which such person would otherwise be entitled. (Added to Act Apr. 11, 1935, c. 153, by Act Apr. 22, 1939, c. 434, §5.)

3728-6. Accumulated deductions to be refunded in certain cases.—Whenever a member of said association shall cease to be a member of said department, for any reasons other than death or retirement, he shall be paid, on demand, the full amount of the accumulated deductions from pay standing to his credit. Whenever any member shall die without having received a pension, or without having received in pension payments an amount equal to the total amount of the accumulated deductions from his salary heretofore provided for, the full amount of such accumulated deductions, less such pension payments, if any, as have been made to said member shall be paid in one lump sum to the beneficiary or beneficiaries designated by such member, or if none, to the legal representatives of such member; provided, however, if no valid claim is established therefor, such accumulated deductions shall remain with and become the property of said association. No member shall be entitled to interest upon, deductions under the provisions of this paragraph. (Added to Act Apr. 11, 1935, c. 153, by Act Apr. 22, 1939, c. 434, §6.)

3728-7. Benefits other than service pension.—Nothing herein shall be construed as preventing any such association from paying any benefits other than service pension which they may be authorized to pay to members of the association under the General Laws of this state or of the statutes hereinbefore referred to, except that such benefits shall not be paid to any member while he is receiving a pension hereunder. (Added to Act Apr. 11, 1935, c. 153, by Act Apr. 22, 1939, c. 434, §7.)

3729. Pensions for members of volunteer fire departments in certain cities and villages.
Act is invalid. Stevens v. N., 161M20, 200NW927.

3732. Fire departments may share in benefits—Duties of commissioner.
This section, in so far as it gives to fire departments the option to accept or reject the benefits of this act, is violative of Const. art. 4, §§33, 34, denouncing special legislation. Stevens v. Village of Nashwauk, 161M20, 200 NW927.

3737 to 3744 [Repealed.]
Repealed by Act Apr. 8, 1933, c. 177, §29, post §3750-29.

ANNOTATIONS UNDER 3739

Commissioner of administration has no power under laws 1939, c. 431, art. II, §16, to reduce expenditure for aid to fire departments. Op. Atty. Gen. (640a), Sept. 2, 1939.

Annotations under 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.

3745 to 3747.
These sections may be included in the general repealing clause of Act Apr. 8, 1933, c. 177, §29, post, §3750-29, but this is not clear.

3748 to 3750 [Repealed.]
Repealed by Act Apr. 8, 1933, c. 177, §29, post 3750-29.
Annotations under 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.

Annotations under 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.

Any fireman, as that term is herein defined, actively employed as such in any city of the first class on January 1, 1937, may be eligible to membership in a firemen's relief association. Such fireman shall make application within 90 days from and after the passage of this act. His application must be acted upon by the association within six months thereafter.

Upon the acceptance of said application, the membership of such applicant shall become effective as of the date when he was entered on the payroll of the department, provided the applicant shall make up all dues which he would have paid had he been a member of the Firemen's Relief Association from the date he entered upon the payroll of the department. All payments, benefits and privileges to which said firemen are entitled as members of said fund shall be governed by Mason's Minnesota Statutes, 1936 Supplement, Section 3750-1 and 3750-38. (Act Apr. 8, 1933, c. 177, §4; Apr. 5, 1937, c. 155, §1.)

Sec. 2 of Act Apr. 5, 1937, cited, provides that the Act shall take effect from its passage.

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.)

Commissioner of administration has no power under laws 1939, c. 431, art. II, §16, to reduce expenditure for aid to fire departments. Op. Atty. Gen. (640a), Sept. 2, 1939.

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 association in certain cities.—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 five and one-half 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 to three-quarters 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; Apr. 17, 1937, c. 279, §1.)

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.)

The right of the widow of a pensioned fireman to a pension from relief association is governed by the terms of the statutes under which association organized and in force at the husband's death. State v. Minneapolis Fire Department Relief Ass'n, 284NW884. See Dun. Dig. 6605a.

There is no room for construing statute as applicable only to women who marry firemen pensioners subsequent to passage. Id. See Dun. Dig. 6605a.

Right of widow of a fireman service pensioner to a pension is determined by law in force at time of such pensioner's death, and where death occurred since Laws 1933, c. 177, became effective widow is not entitled to such pension unless she resided with pensioner at time of his death. Id. See Dun. Dig. 6605a.

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 warrants 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 $600,000.00, 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 $600,000.00 and for a period of 15 days thereafter. As soon as the balance in said special fund amounts to $600,000.00 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; Apr. 22, 1937, c. 361, §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, who carries insurance in a company not licensed by this state, or if he has not insured his property, who sets aside a reserve against loss or damage by fire, shall furnish to the Commissioner of Insurance, on a form prescribed and furnished by the Commissioner of Insurance, a statement, verified by affidavit, showing the description and location of the property, the amount of insurance in companies not licensed by this state 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. Such statement shall be furnished by those property owners carrying insurance in companies not licensed by this state not more than thirty days after the issuance of the policy or policies of insurance, and by those property owners not carrying insurance but having an insurance or other reserve fund against loss or damage by fire upon demand of the Commissioner of Insurance, or if no such demand is made, then on or before January 31st of each year. Every such property owner whose duty it is to make such statement who shall wilfully make a false statement or who shall for thirty days after such demand, neglect to render such statement, shall be guilty of a misdemeanor and shall be fined fifty dollars, one-half of which fine shall be transmitted to the Commissioner of Insurance and shall be disbursed by him as other sums collected under the terms of this Act are disbursed. (Act Jan. 9, 1934, Ex. Ses., c. 56, §1; Apr. 17, 1937, c. 258, §1.)

3750-36. Same—collection of percentage on premium—recovery.—If such insurance has been effected in any company not authorized to do business in this state, or if such owner carries his own insurance fund or reserve, the Commissioner of Insurance shall, and he is hereby authorized and empowered, to collect from such property owner such taxes as would equal the taxes on the annual premium which authorized insurance companies would have charged for insuring such property. If not paid upon demand, such per centum may be recovered in a civil action brought in the name of the State. (Act Jan. 9, 1934, Ex. Ses., c. 56, §2; Apr. 17, 1937, c. 258, §2.)

3750-37. Same—disposition of proceeds.—All sums collected under the terms of this Act shall be payable to the respective municipalities or fire department relief associations in the same manner and disbursed for the same purposes as the two (2) per cent state tax on fire insurance premiums. (Act Jan. 9, 1934, Ex. Ses., c. 56, §3; Apr. 17, 1937, c. 258, §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.

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.

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.

Agent represented insurer and not insured in accepting overdue payments while insured was ill. Wagner v. S., 197M319, 267NW216. See Dun. Dig. 4704.

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.

Sentence of nine months for unlawful issue of license held not excessive. State v. Bean, 199M16, 270NW918. See Dun. Dig. 4640, 4702.

Evidence sustains jury's finding that an insurance policy was "issued" by defendant in Ramsey county, and as such the offense charged in indictment was properly triable there. Id.

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.

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.

This section is not violated by return of part of premium paid pursuant to reduction of rates following issuance of policies. Op. Atty. Gen. (249B-3), June 8, 1939.

3768. Application of act.

This section did not authorize hospital group insurance policy purporting to insure more than one person. Op. Atty. Gen. (249b-9), Jan. 26, 1939.

CHAPTER 20
Inspector of Oils

3770. Abolishing of office of state oil inspector and transferring powers, etc.

Superseded by §§53-25, 53-27½.

Editorial note.—Powers conferred by this chapter are transferred to the Commissioner of Taxation, and the office of Chief Oil Inspector is abolished, by Act Apr. 22, 1939, c. 431, Art. 6, §4, ante, §2362-4.

3771. Dairy and food commissioner to be appointed by governor.

Superseded in part by §§53-25, 53-27½.

3773. Inspection districts—Compensation of inspectors.—The dairy and food commissioner, in conjunction with the chief oil inspector, is hereby authorized to create not to exceed sixty-seven inspection districts in the state. In the creation of said district due consideration shall be given to important shipping centers. Said commissioner, with the advice of the *chief oil inspector, is hereby authorized to appoint* when necessary one deputy for each inspection district so established. He shall take such measures as he deems necessary to prevent duplication of effort by inspectors under his control and to effect economy in the administration of the inspection laws, and to that end he shall detail dairy and food inspectors to perform the duties of deputy oil inspectors as far as practicable. The deputy inspectors shall receive compensation on a graded scale based upon their qualifications, the volume of work they perform, and tenure of employment. Such compensation shall be not less than One Hundred Dollars ($100.00) per month during the probationary period of one year, not less than One *Hundred Twenty-five Dollars ($125.00) per* month during the next succeeding four years, and thereafter not less than One Hundred Fifty Dollars ($150.00) per month; and they shall be reimbursed for all expenses necessarily incurred by them in the performance of their official duties; such salaries to be determined by the dairy and food commissioner upon the advice of the chief oil inspector. For the purpose of effecting more efficiency and economy in the service, the chief oil inspector is authorized, whenever he finds it advantageous and practical, to detail deputy oil inspectors to inspect petroleum products in storage outside of the state at places from which such products are transferred to dealers or consumers within the state. (As amended Apr. 26, 1937, c. 439, §1.)

Act increasing minimum compensation of deputy oil inspectors without making appropriations therefor did not contemplate reduction of needed personnel to efficiently administer an important revenue producing tax law, and though an act ordinarily becomes effective day following approval, such act would not become effective until after an appropriation had been made by legislature, in absence of administrative means of making salary and wage adjustment to compensate for minimum salaries prescribed. Op. Atty. Gen. (9a-27), May 10, 1937.

Oil inspection department must observe statute fixing certain minimum salary, and must keep within appropriations made, though it must result in reducing personnel or salaries of other personnel not fixed by law. Op. Atty. Gen. (325a-21), June 8, 1937.

3774. Reports and inspection—improper traffic.

Superseded by §3787-3.

3776. Kerosene must be inspected.

Superseded by §§3787-7 to 3787-9.

3778. Gasoline must be inspected.

Superseded by §§3787-5, 3787-6.
175M276, 221NW6.

3779. Duties of oil inspector and deputies.

Superseded by §3787-11.

3780. Sale of adulterated kerosene or gasoline forbidden.

Superseded by §3787-12.

3781. Must be inspected before unloading.

Superseded by §§3787-4, 3787-5.

3783. Fees for inspection.

Superseded by §3787-14.

3785. Penalty for adulteration or changing of certificate.

Superseded by §3787-16.

3786. Violations—penalties.

Superseded by §§3787-16, 3787-18.

3787-1. Definitions.

Section 1. Unless the language or context clearly indicates that a different meaning is intended the following words and terms shall, for the purpose of this act, be given the meaning hereinafter subjoined to them.

(a) "Motor gasoline" means and includes all gasoline, benzine, naphtha, benzol and other volatile and inflammable liquids by whatever name called, used for generating power in combustion engines, but does not include the products herein defined as kerosene, furnace oil or gasoline for other industrial, heating or cooking purposes.

(b) "Kerosene" means and includes all illuminating oils, signal oil, mineral seal and other petroleum liquids, by whatever name called, used for illuminating, cooking or power purposes, but does not include the products herein defined as gasoline or furnace oil.

(c) "Furnace oil" means and includes all kerosene distillate, gas oil, fuel oil, and other petroleum liquids by whatever name called used or to be used only for domestic heating purposes, but does not include the products herein defined as gasoline or kerosene.

(d) "Lubricating Oils" means and includes all grades of petroleum oil used for the general lubrication of internal combustion engines.

(e) "Distributor" means and includes every person, co-partnership, company, joint stock company,