1941 Supplement

To

Mason's Minnesota Statutes, 1927

and

Mason's 1940 Supplement

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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CHAPTER 18

Public Examiner

3274. Department established—Powers and duties.
Water, light, power and building commission of a village has no authority to engage private auditor. Op. Atty. Gen., (476a-1), April 1, 1940.

3279. Cities of more than 50,000 inhabitants.
This section was changed or amended so that a city of the first class was to pay all expenses of examinations, with salaries of examiners limited to $10.00 per day. Op. Atty. Gen. (353a-3), May 8, 1942.

3280. Other cities.
It is not required to publish report of public examiners for benefit of public in community. Op. Atty. Gen. (353a-3), Mar. 31, 1941.
When report discloses any violation of law it is required that additional copies be filed with city and county attorneys. Id.

3281. School districts, towns and villages.
Neither village council nor commission should engage a private auditor to audit books and records in reference to municipal light plant, at least in absence of special circumstances. Op. Atty. Gen., (476a-1), Dec. 5, 1939.
There is no authority for village to hire private auditors. Op. Atty. Gen., (353a-3), Feb. 1, 1940.
School districts have no authority to employ a private auditor, except as provided in §3156-6(21), 125.21. Op. Atty. Gen. (159a-1), Dec. 22, 1942; Jan. 15, 1943.

3286. Assistants and employees and bonds to be given.
Public examiner has power to recommend that townships use calendar year as their fiscal years. Op. Atty. Gen., (353a-3), Jan. 11, 1940.

3286-2. Examination made upon written request.—Upon a written request signed by a majority of the members of the governing body of any city, village, town or school district, the comptroller shall examine the books, records, accounts and affairs of the same, but such written request shall be presented to the clerk or recording officer of such city, village, town or school district, before being presented to the comptroller, who shall determine whether the same is signed by a majority of the members of such governing body and, if found to be so signed, shall certify such fact, which certificate shall be conclusive evidence thereof in any action or proceeding for the recovery of the costs, charges and expense of any examination made pursuant to such request; provided, that nothing herein contained, or in any of the other laws of the state relating to the public examiner, shall be so construed as to prevent any city, village, town or school district from employing a certified public accountant to examine its books, records, accounts and affair. (As amended Mar. 26, 1943, c. 188, §1.)

Section does not relate to nor include securing special examinations of cities of the first class. Op. Atty. Gen. (353a-3), May 8, 1942.

3286-3. Municipality to pay cost of examination.
Sum of items for salary costs and pro rata administrative expense is amount which should be charged to and paid by municipality examined. Op. Atty. Gen. (353A-3), Aug. 1, 1941.
Cities of first class and all other municipalities are to bear expense of public examiner's office in performing services for them, and expense computable at same rate to all of them. Op. Atty. Gen. (353a-3), May 8, 1942.
Provision for $5 per day in earlier statutes is probably repealed by this section. Op. Atty. Gen. (159a-1), Jan. 15, 1943.

3286-6. State Auditor to certify amount due.
Section 3286-6 authorizes county auditor to make levy to pay for state's claim of public examination as an additional levy without regard to 17 mill limitation imposed by §2060-2. Op. Atty. Gen. (519O), Dec. 18, 1940.

3286-12. Duties of Public Examiner—Collect information from local units of Government—Report same to Legislature.—The public examiner, or his designated agent, shall collect annually from all city, village, county, and other local units of government, except towns, information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, borrowing, debts, principal and interest payments on debts, and such other information as may be needful. The data shall be supplied upon blanks prescribed by the public examiner and all public officials so called upon shall fill out properly and return promptly all blanks so transmitted. The public examiner, or his assistants, may examine local records in order to complete or verify the information. (As amended Act Apr. 14, 1943, c. 435, §1.)
City clerk may not be paid additional compensation for work in making out report of city affairs upon request of state public examiner. Op. Atty. Gen., (60), March 1, 1940.
Section requires local town officials to fill out blanks which have been supplied to them by public examiner. Op. Atty. Gen. (353a-3), Aug. 1, 1942.

3286-15. Shall be subject to prior laws; etc.
Sum of items for salary costs and pro rata administrative expense is amount which should be charged to and paid by municipality examined. Op. Atty. Gen. (353A-3), Aug. 1, 1941.
Legislature intended that functions performed by public examiner in auditing municipalities, whether first class cities or other municipalities, should be supported out of bills presented to municipalities, provided that salary charge for examiners engaged shall not exceed $10.00 per day, and this charge may cover the number of days required for the work even though more than one hundred. Op. Atty. Gen. (353a-3), May 8, 1942.

CHAPTER 19

Insurance

3288. To enforce laws.
An annuity contract issued by a life insurance company, is not a "security" of sort dealt with by blue sky law, and is not subject to administrative powers of security commission. Bates v. E., 206M482, 288NW834. See Dun. Dig. 1125a.
Commissioner is without authority to rule that rates charged for fidelity and surety contracts must be filed before they are effective, but it is proper for him to request that such rates be filed with his department in order to determine violations of law. Op. Atty. Gen. (250b), Apr. 9, 1941.

3292. Examinations.
"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. Op. Atty. Gen., (250), Nov. 27, 1939.

3293. Fees for examination.
Examination revolving fund. Laws 1943, c. 409.

3294. Commissioner may appoint examiner.
Examination revolving fund. Laws 1943, c. 409.
"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. Op. Atty. Gen., (250), Nov. 27, 1939.

3296-1. Insurance department examination revolving fund created.—There is hereby created the insurance department examination revolving fund for the purpose of carrying on the examination of foreign and domestic insurance companies. (Act Apr. 12, 1943, c. 409, §1.)
[60.105]

3296-2. Same—Appropriation.—Such fund shall consist of the $7,500 appropriated therefor and the moneys transferred to it as herein provided, which are reappropriated to the commissioner of insurance for the purpose of this section. (Act Apr. 12, 1943, c. 409, §2.)
[60.105]

3296-3. Same—Fund to be kept in state treasury.—Such fund shall be kept in the state treasury and shall be paid out in the manner prescribed by law for moneys therein. (Act Apr. 12, 1943, c. 409, §3.)
[60.105]

3296-4. Same—Purposes for which fund may be expended.—Such fund shall be used for the payment of per diem salaries and expenses of special examiners and appraisers, and the expenses of the commissioner of insurance, deputy commissioner of insurance, chief examiner, actuary, regular salaried examiners and other employees of the insurance department when participating in examinations. Expenses as used in this act shall include meals, lodging, laundry, transportation and mileage. The salary of regular employees of the department of insurance shall not be paid out of this fund. (Act Apr. 12, 1943, c. 409, §4.)
[60.105]

3296-5. Same—Collections to be deposited in fund.—All moneys collected from insurance companies under the provisions of Mason's Minnesota Statutes 1927, Sections 3293, 3294 and 3484, shall be deposited in the insurance department examination revolving fund. (Act Apr. 12, 1943, c. 409, §5.)
[60.105]

3296-6. Same—Examiner and employees to be paid from such fund.—Upon authorization by the commissioner of insurance, the moneys due each examiner or employee engaged in an examination under the provisions of Mason's Minnesota Statutes 1927, Sections 3293, 3294, 3484 and 3593, shall be paid to him from the insurance department examination revolving fund in the manner prescribed by law. (Act Apr. 12, 1943, c. 409, §6.)
[60.105]

3296-7. Same—Balance in excess of $7500 to be cancelled into general revenue fund.—The balance in such fund on June 30 of each year in excess of $7,500 shall be forthwith cancelled into the general revenue fund. (Act Apr. 12, 1943, c. 409, §7.)
[60.105]

3306. Valuation of bonds, etc.—All bonds or other evidences of debt having a fixed term and rate held by an insurance company or fraternal beneficiary association authorized to do business in this state may, if amply secured and not in default as to principal and interest, be valued as follows: If purchased at par, at the par value; if purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made, provided that the purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase; and, provided further, that the commissioner of insurance shall have full discretion in determining the method of calculating values according to the foregoing rule. If 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 are purchased above par, they may, if not in default as to principal and interest, be valued during the first five years after purchase on the basis of the purchase price adjusted in equal annual instalments to bring the value to par at the end of five years. (As amended Apr. 9, 1941, c. 141, §1.)

Commissioner of insurance may authorize method of accounting whereby insurance company exchanging or selling securities and buying other securities to replace them to take profit on transaction in reduction of purchase price of newly acquired securities in determining their purchase price for amortization purposes. Op. Atty. Gen. (249a-12), Apr. 3, 1941.

3310. Deposits of securities.

Commissioner of insurance holds securities deposited with him by insurance companies as a statutory trustee, and may require them to be registered in his name. Op. Atty. Gen. (250), June 24, 1942.

GENERAL PROVISIONS

3313. Acceptance of laws—Business out of state.—Every company, domestic or foreign, shall file with the commissioner its acceptance of the provisions of the insurance laws of the state of Minnesota, and shall also file its charter and any amendments thereto, and each such company shall be governed thereby and by those laws relative to corporations in general, so far as applicable and not otherwise specifically provided. No foreign company shall be denied a license in this state because its corporate powers exceed those which it is permitted to exercise under the laws of this state, but no foreign company, which does outside of this state any kind or combination of kinds of insurance not permitted to be done in this state by similar domestic companies, now or hereafter organized, shall be or continue to be authorized to do an insurance business in this state if the commissioner of insurance finds, after ten days' notice sent by registered mail to the home office of the company involved, and an opportunity to be heard, that the doing of such kind or combination of kinds of insurance business impairs the financial solvency of the company or its financial ability to meet its obligations incurred in this state, or finds that the doings of such kinds or combination of kinds of insurance business is prejudicial to the interests of policyholders, creditors or the people of this state. (As amended Act Apr. 22, 1943, c. 574, §1.)

3314. Insurance defined—Unlawful contracts—Contracts deemed made in this state.

Non-profit hospital service plan corporations shall be subject to insurance plans of state. Laws 1941, c. 53.

Where there is a conflict between provisions of an insurance policy form and terms inserted in such form to cover a particular case, latter must be accepted as disclosing true intent of parties. Biwabik Concrete Aggregate Co. v. U., 206M239, 288NW394. See Dun. Dig. 4659.

In case of doubt, subject matter may be examined for purpose of applying thereto language of contract. Id.

Surrounding circumstances may be considered in determining meaning of insurance policies. Id.

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

It is a general rule that a contract of insurance may not be extended either as to coverage or parties by waiver, and usual doctrine of waiver is applicable to breaches after insurance is effected or, after loss, to conditions precedent to suit. Abeln v. I., 208M582, 295NW 54. See Dun. Dig. 4675.

Court should not ignore plain, unambiguous and reasonable terms of voluntary insurance contract. Wolf v. Employers Mut. Liability Ins. Co., (DC-Minn), 40FSupp 635. See Dun. Dig. 1532, 4659, 4875c.

Mennonite Aid Plan is "other insurance". Op. Atty. Gen. (249j), Dec. 7, 1943.

3315. Capitol stock required and business which may be transacted.—

(a) Insurance corporations shall be authorized to transact in any state or territory in the United States, in the Dominion of Canada, and in foreign countries, when specified in their charters or certificates of incorporation, either as originally granted or as thereafter amended, any of the following kinds of business, upon the stock plan, or upon the mutual plan when the formation of such mutual companies is otherwise authorized by law.

1. To insure against loss or damages to property on land and against loss of rents and rental values, leaseholds of buildings, use and occupancy and direct or consequential loss or damage caused by change of temperature resulting from the destruction of

refrigerating or cooling apparatus, or and of its connections, by fire, lightning, windstorm, tornado, cyclone, earthquake, hail, frost or snow, bombardment invasion, insurrection, riot, civil war or commotion, military or usurped power and loss or damage to property by explosion, whether fire ensues or not, except explosions on risks specified in sub-division 3 of this section, also against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps or other apparatus erected for extinguishing fires, and of water pipes, and against accidental injury to such sprinklers, pumps, or other apparatus.

2. To insure vessels, freight, goods, wares, merchandise, specie, bullion, jewels, profits, commissions, bank notes, bills of exchange, and other evidences of debt, bottomry and respondentia interest, and every insurance appertaining to or connected with marine risks of transportation and navigation, including the risks of lake, river, canal and inland transportation and navigation.

3. To insure steam boilers and pipes, flywheels, engines and machinery connected therewith or operated thereby, against explosion and accident, and against loss or damage to persons or property resulting therefrom, and against loss of use and occupancy caused thereby; and to make inspection of and to issue certificates of inspection upon such boilers, pipes, flywheels, engines and machinery.

4. To make contracts of life and endowment insurance, to grant, purchase, or dispose of annuities of endowments of any kind, and to insure against accidents to or sickness of the assured.

5. To insure against loss or damage by the sickness, bodily injury or death by accident of the assured, or of any other person employed by or for whose injury or death the assured is responsible.

6. To guarantee the fidelity of persons in fiduciary positions, public or private, or to act as surety on official and other bonds, and for the performance of official or other obligations.

7. To insure owners and others interested in real estate against loss or damage, by reason of defective titles, incumbrances, or otherwise.

8. To insure against loss or damage by breaking of glass, located or in transit.

9. To insure against loss by burglary, theft, or forgery.

10. To insure against loss from death of domestic animals and to furnish veterinary service.

11. To guarantee merchants and those engaged in business, and giving credit, from loss by reason of giving credit to those dealing with him; this shall be known as credit insurance.

12. To insure against loss or damage to automobiles or other vehicles and their contents, by collision, fire, burglary or theft, and other perils of operation, and against liability for damage to persons, or property of others by collision with such vehicles, and to insure against any loss or hazard incident to the ownership, operation or use of motor or other vehicles.

13. To insure against liability for loss or damage to the property of another caused by the insured or by those for whom the insured is responsible.

14. To insure against any loss or damage resulting from accident or injury suffered by any person, occurring in the practice of medicine, or surgery or in the dispensing of drugs or medicine, for which loss or damage the insured may be legally liable.

15. (a) 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 pre-determined 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.

(b) The paid-up capital stock of every such corporation authorized to transact the kinds of business enumerated in subdivisions 1 to 15 of this section shall not be less than specified below:

Subdivision 1, $100,000.
Subdivision 2, $100,000.
Subdivision 3, $100,000.
Subdivision 4, $100,000.
Subdivision 5, $100,000.
Subdivision 6, $250,000, and a surplus constantly maintained of at least $50,000.
Subdivision 7, $200,000.
Subdivision 8, $100,000.
Subdivision 9, $100,000.
Subdivision 10, $100,000.
Subdivision 11, $100,000.
Subdivision 12, $100,000.
Subdivision 13, $100,000.
Subdivision 14, $100,000.
Subdivision 15, $ 10,000.

Companies organized to transact business specified in Subdivision 15 shall be subject to all the provisions of law relating to legal reserve life insurance companies, except that the deposit with the commissioner of insurance shall be $10,000 and that such company shall have secured at least one hundred applications, upon one hundred separate lives, for insurance aggregating at least $10,000. Such companies shall issue only non-participating policies, which shall be construed as industrial policies.

Any such corporation having a paid-up capital stock of not less than $200,000 and a surplus of not less than $50,000 constantly maintained may, when authorized by its articles of incorporation, transact any or all of the kinds of business specified in Subdivisions 1 to 15 inclusive, excepting those specified in Subdivisions 1, 2, 4, 6 and 15. Any such corporation having paid-up capital stock of not less than $200,000, may transact the kinds of business specified in Subdivisions 1, 2 and 12 of this section.

Any such corporation having paid-up capital stock of not less than $200,000 and authorized to transact the kinds of business specified in Subdivision 4 of this section may also transact the kinds of business specified in Subdivision 5.

Any such corporation having a paid-up capital stock of not less than $250,000 and a surplus of not less than $50,000 constantly maintained, when authorized to transact the kinds of business specified in Subdivision 6, may also transact the kinds of business specified in Subdivisions 3, 5, 7, 8, 9, 10, 11, 12, 13 and 14. (As amended Act Apr. 17, 1941, c. 294, §1.)

A foreign company, authorized by its charter to do two classes of insurance business, transaction of which by a domestic company would not be permitted in Minnesota, may not be admitted here, even though it does not in fact transact or intend to transact both classes of business permitted by its charter anywhere. Op. Atty. Gen. (251), Feb. 15, 1943.

(a)(1).

State statutes and corporate charter held to authorize company to insure against vandalism and malicious mischief. Op. Atty. Gen., (249B), Jan. 6, 1940.

(a)(4).
Conversion into mutual company. Laws 1943, c. 231.
(a)(5).
Fatal disease of employee slowly devoloping by reason of improper ventilation, such as silicosis and pneumoconiosis with super-imposed tuberculosis, is not sustained by reason of "accident" within coverage of employer's liability policies, and employer who paid judgment and garnished insurers cannot recover indemnity, such judgment having been entered in tort action for negligence, though part of policy covered workmen's compensation liability. Golden v. Lerch Bros., 211M30, 300NW207. See Dun. Dig. 4867.

A life insurance company may transact business of public liability automobile insurance under this subsection. Op. Atty. Gen. (253B), Sept. 25, 1940.

It is not clear that this subdivision would warrant a policy of insurance extending full medical and surgical aid to domestic employees. Op. Atty. Gen. (253a-7), Mar. 28, 1941.
(a) (6).
For cases on fidelity insurance, see §3710.
A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.
(a)(8).
Commissioner may permit a stock corporation to be formed to write glass breakage insurance and also a line of insurance not specifically provided for under this section, and set up requirements as to capital and surplus. Op. Atty. Gen. (249b), Apr. 12, 1941.
(a)(12).
Norwood v. T., 204M595, 284NW785, 131ALR1496.

Where automobile indemnity policy excluded from coverage injury or death of a relative of insured and extension certificate by reference to policies being written by insurer at time of the extension instead of using the word "relative" specifically enumerated the relatives as to which coverage was excluded insured was entitled to a reformation of a policy by substituting the specific enumeration for the word relative in the exclusion clause. Preferred Accident Ins. Co. of New York v. Onali, (C.C.A.8) 125 F. (2d) 580. See Dun. Dig. 4875c.

A sister-in-law of insured is not a "relative" within clause of automobile indemnity policy excluding from coverage, injury or death of a relative of insured. Id.

Where son obtained permission to use father's automobile for trip to Minneapolis from Duluth to attend football game, intending not to go to Minneapolis but to drive some friends to Chicago, and met with an accident while en route to Chicago, he was not using the car with his father's permission, expressed or implied, at time of accident, within omnibus clause of insurance policy. Liberty Mut. Ins. Co. v. S., (DC-Minn), 34FSupp 885.

Public policy does not require an omnibus coverage in insurance policy without any restrictive endorsement. Wolf v. Employers Mut. Liability Ins. Co., (DC-Minn), 40FSupp635. See Dun. Dig. 1532, 4659, 4875c.

Wisconsin statutes did not apply to an automobile accident insurance policy which was a Minnesota contract. Id.

Amendment to mutual insurance policy providing that insurer would not be liable for accident occurring while insured's son was driving automobile was not so discriminatory as to avoid principle of mutuality. Id.

Where exclusion provisions of a certain type of automobile accident insurance policy were changed so as to be more beneficial to insured parties, after the issuance of a certain policy, and owner of such policy twice in later years renewed his policy, he was entitled to a reformation of the contract so as to include the later exclusion provision. Preferred Acc. Ins. Co. of New York v. Onali, (DC-Minn) 43 F. Supp. 227. See Dun. Dig. 8331.

Finance company could recover under collision policy amount remaining unpaid on contract, though vendee, unknown to finance company, sold car in another state so as to terminate interest of finance company and purchaser obtained other insurance before collision and repair of car, but could not recover amounts expended in ascertaining facts. Midland Loan Finance Co. v. S., 208 M251, 293NW313. See Dun. Dig. 4875o.

On death of insured in collision policy coverage terminated after 30 days, but there was an extension or renewal where widow assigned car by probate court was assured by agent who wrote policy that it would remain in effect until a certain date, though such agency had been terminated by insurer except for "service" to policies kept in force by insurer, there being a ratification due to knowledge of another agent of the facts and a subsequent notice of cancellation of policy with retention of premium past date of accident. Abeln v. I., 208M582, 295NW54. See Dun. Dig. 4875o.

Where custodian of truck containing furs was standing inside a tavern within partial vision of truck and saw thieves before they completely removed truck from his range of vision, recovery was proper under a robbery policy insuring against losses occasioned by "an overt felonious act committed in the presence" of a custodian and of which he was "actually cognizant at the time." London v. Maryland Casualty Co., 210M581, 299NW193. See Dun. Dig. 4875k.

In action to restrain enforcement of judgment for purpose of contribution purposes, evidence held to sustain finding that when defendant entered intersection and was about to turn left he saw plaintiff's car approaching and swung in front of it in intentional violation of traffic law and in reckless disregard of obvious danger and that neither defendant nor his insurer was entitled to contribution. Kemerer v. State Farm Mut. Auto Ins. Co., 211M249, 300NW793. See Dun. Dig. 1924.

Person on way to work in employer's car. State Farm Mut. Auto Ins. Co. v. Skluzacek, 208M443, 294NW413.

Where owner of car suffered personal injuries and property damage and collected collision insurance for property damage and then brought action against wrongdoer for both personal injuries and property damage, undertaking the management of the entire case, whatever damage there was to car was held in trust by plaintiff for the insurance company and burden was then on him as trustee to protect the cestui que trust, and if he desired assistance in protecting that interest he should have demanded it, and if he wanted to know how much jury would include in its verdict for damage to car, he should have asked for a special finding, and not having asked for the finding, the only inference is that he was satisfied to take the amount he had received from the insurer as a basis for computing what he would hold in trust for it, less the expense of presenting that phase of the case, not including cost of expert witnesses to the personal injuries. Hayward v. State Farm Mut. Automobile Ins. Co., 212M500, 4NW(2d)316, 140ALR1236.

The only means which a collision insurance company had of recovery on its subrogated right was to have its claim included in insured's cause of action against wrongdoer where there were both personal injuries and property damage, and as against wrongdoer, collision insurer could not be in any better position than the insured, since the cause of action could not be split by the insurer any more than it could by the insured as against wrongdoer. Id.

Subrogation is not dependent upon contract, privity, or strict suretyship, and one suffering personal injuries and damage to his car in a collision subrogated a part of his cause to collision insurance company when he collected his collision insurance, whether or not he signed a subrogation receipt knowing what it was. Id.

Where owner of automobile suffers both personal injuries and property damage and recovers from wrongdoer for personal injuries and damage to his car before he seeks to collect on collision insurance, he cannot thereafter recover collision insurance, because he would thereby deprive insurer of its right of subrogation, and would be getting double damages for the same loss. Id.

In action by a liability insurer for subrogation to rights of its named assured and for recovery of amount of judgment paid by insurer, complaint alleging that defendant was a guest of assured and was guilty of negligence in closing automobile door upon foot of another prospective guest did not state a cause of action because not alleging facts from which it could be determined upon what ground assured was liable to injured person for negligence of the defendant. American Farmers Mut. Auto. Ins. Co. v. Riise, 214M6, 8NW(2d)18. See Dun. Dig. 4875c.

Query whether closing of automobile door preparatory to starting automobile constituted "using" the automobile itself, within meaning of liability policy so as to include coverage of guest closing door. Id.

Where judgment in negligence case was an adjudication that negligence of all defendants was active and that all defendants were in pari delicto, insurer of one of the defendants was bound by the determination in a subsequent suit against another of the defendants for indemnity to recover amount paid by such insurer as its contribution to the judgment previously paid. Fidelity & Casualty Co. v. Minneapolis Brewing Co., 214M436, 8NW (2d)471. See Dun. Dig. 4875c.

In action by one automobile liability company against another company to recover one-half expense in defending and settling an action against insured, defendant asserting that its policy had been rescinded and cancelled by agreement had burden of proving it. Merchants & Farmers Mut. Co. v. St. Paul-Mercury I. Co., 214M544, 8 NW(2d)827. See Dun. Dig. 4875c.

In action by one liability insurance company against another to recover one-half its costs and expenses in defending and settling an action against the insured, whether insured's policy in defendant company had been cancelled prior to accident held for the jury, and it was error to direct verdict for defendant on testimony that defendant had agreed to return premium to insured and to pick up the policy and return the money. Id. See Dun. Dig. 4659a.

Rescission of an insurance contract may be accomplished by mutual agreement without an actual surrender of the policy, but whether a rescission has been accomplished depends upon the intent of the parties as evidenced by their acts, and it is ordinarily a question of fact for the jury to determine whether the parties intended a cancellation or rescission. Id. See Dun. Dig. 4659a.

Liability policy expressly excluding from coverage "the insured or any member of the family of the insured" did not cover injuries to wife of named assured incurred in an accident attributable to the negligence of an additional assured, one driving with the consent and permission of the named insured. Pearson v. Johnson, 215M480, 10NW (2d)357. See Dun. Dig. 4875c.

Liability insurer in policy on another car owned by driver was liable. Id.

(a)(13).

Contractor's public liability insurance policy (1) covering claims for bodily injuries accidentally suffered by persons other than employes of assured by reason of and during prosecution by the assured of business described as sand and gravel digging "including Drivers, Chauffeurs and their Helpers", and (2) excluding claims for injuries caused by any person while engaged in the maintenance or use of any draught or driving animal owned, hired, borrowed or used by the assured, is construed to cover claims for injuries resulting from a collision between an automobile and a horse which a driver employed by the assured had negligently permitted to wander on the highway. Biwabik Concrete Aggregate Co. v. U., 206M239, 288NW394. See Dun. Dig. 4640.

Like any other contract, a public liability policy must be taken by its four corners and construed as a whole. Hutchinson Gas Co. v. P., 206M257, 288NW847. See Dun. Dig. 4643.

Public liability policy held by a gas company held not to cover death by asphyxiation occurring after installation in a brooder house used by hunters in north woods. Id. See Dun. Dig. 4643.

Insurer under public liability policy excluding any obligation for injuries if caused by the possession, consumption or use elsewhere than upon the insured premises of any article manufactured, handled or distributed by the assured, a fuel dealer, is not obliged to defend a suit against the assured for injuries resulting when dynamite caps contained in coal delivered by the assured to a customer exploded while in the possession of the latter's minor son. Lyman Lumber & Coal Co. v. T., 206 M494, 289NW40. See Dun. Dig. 4643.

Insurer was bound to defend assured against only such claims as would, if proved, create liability against which insurer would be bound to indemnify assured. Id. See Dun. Dig. 4643.

Where there is no coverage by reason of an exclusionary clause in a public liability policy, there is no obligation on part of insurer to defend action against insured and it may not be held liable for expenses and attorney's fees paid by insured in defending. Langford Elec. Co. v. Employers Mut. Indem. Corporation, 210M 289, 297NW843. See Dun. Dig. 4875pp.

In action for reformation of public liability policy issued to an electric company constructing lines for Rural Electric Cooperative, evidence held not to warrant finding that it was intended that policy should cover willful and intentional trespass in cutting trees. Id.

To warrant reformation of public liability insurance policy evidence must be clear, persuasive and convincing. Id. See Dun. Dig. 8347.

Public liability insurer by refusing to defend insured in a suit is concluded by implications contained in verdict and judgment therein. Id. See Dun. Dig. 4875pp, 5176.

A dead body is "property" and a policy form of insurance issued to funeral directors which insures against liability for loss or damage thereto is authorized. Op. Atty. Gen. (249b), Apr. 16, 1941.

3316. Insurance not specifically authorized by law may be transacted by licensed companies upon authorization by commissioner.—Any insurance corporation or association heretofore or hereafter licensed to transact within the state of Minnesota any of the kinds or classes of insurance specifically authorized under the laws of this state may, when authorized by its charter, transact within and without the state of Minnesota any lines of insurance germane to its charter powers and not specifically provided for under the laws of this state when such lines or combination of lines of insurance are not in violation of the constitution or laws of the State of Minnesota, and, in the opinion of the Commissioner of Insurance not contrary to public policy, provided such company or association shall first obtain authority of the Commissioner of Insurance and shall meet such requirements as to capital or surplus, or both, as the Commissioner of Insurance shall prescribe. Such additional hazards may be insured against by attachment to, or in extension of, any policy or policies which such company may be authorized to issue under the laws of this state.

This act shall apply to companies operating upon the stock or mutual plan, reciprocal or inter-insurance exchanges. (As amended Apr. 9, 1941, c. 134, §1.)

Statute and corporate charter held to authorize insurance of properties against loss or damage arising from collapse and slippage. Op. Atty. Gen., (249B), Jan. 6, 1940.

Commissioner may authorize an insurance carrier to extend "full medical and surgical aid to domestic employees under the public liability coverage". Op. Atty. Gen. (253a-7), Mar. 28, 1941.

Commissioner may license a company and prescribe its capital and surplus to carry on glass breakage insurance and in addition thereto some other line of insurance not specifically provided for by statute. Op. Atty. Gen. (249b), Apr. 12, 1941.

3319. Deposits with commissioner.

Statute does not permit any strings to be attached to mortgage deposited with commissioner so that a concealed owner can deprive either policyholders or creditors of insurance company of security and benefit of either its capital structure or the statutory deposit. Fredsall v. M., 207M18, 289NW780. See Dun. Dig. 3177, 3204.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

Commissioner may require that bonds be registered in his name and that mortgages and other securities be assigned to him in order that he may immediately resort to them in event that becomes necessary. Op. Atty. Gen. (250), Apr. 16, 1941.

Commissioner of insurance holds securities deposited with him by insurance companies as a statutory trustee, and may require them to be registered in his name. Op. Atty. Gen. (250), June 24, 1942.

3321. Agents and persons authorized to act.

On death of insured in collision policy coverage terminated after 30 days, but there was an extension or renewal where widow assigned car by probate court was assured by agent who wrote policy that it would remain in effect until a certain date, though such agency had been terminated by insurer except for "service" to policies kept in force by insurer, there being a ratification due to knowledge of another agent of the facts and a subsequent notice of cancellation of policy with retention of premium past date of accident. Abeln v. I., 208M582, 295NW54. See Dun. Dig. 4704.

Authority of agent of liability and compensation insurer was extended by agent's conduct of its affairs known to insurer to include apparent authority to extend credit and to reinstate policy. Steidel v. Metcalf, 210M101, 297NW324. See Dun. Dig. 4704.

A continuous premium deferred life annuity policy became operative when money equal to all premiums to be paid was delivered to and accepted by an agent authorized to receive it, though agent embezzled the money. Blumberg v. Taggart, 213M39, 5NW(2d)388. See Dun. Dig. 4816.

Where an oral contract for present fire insurance was made by one authorized to act for insurer and application was later rejected by company, coverage afforded by oral contract remained in effect until applicant was notified so that he might have reasonable opportunity to get insurance elsewhere. Rommel v. New Brunswick Fire Ins. Co., 214M251, 8NW(2d)28. See Dun. Dig. 4642a, 4647.

General rule is that where an application for insurance is made to an agent who represents several companies, no contract of insurance is engendered between insured and any particular company until such company is selected by the agent and designated by him as the one in which the insurance is to be written. Id. See Dun. Dig. 4642a, 4652, 4708.

General rule is that an insurance company which has appointed an agent with general authority to act in its behalf throughout a considerable territory is charged with knowledge of reasonable needs of such agent to appoint assistants or subagents to solicit insurance within the assigned area, and where such assistant or subagent acts within scope of his appointment, his acts bind company to same extent as if his appointment came directly from the company. Id. See Dun. Dig. 4704.

It is unimportant to determine whether an agent's authority is apparent or implied, since in either case authority carries with it agent's power to bind his principal as to such things as are directly connected with and essential to business in hand. Id. See Dun. Dig. 4704.

Courts may not close their eyes to well-known fact that local agent of an insurance company is the medium through whom business of procuring insurance contracts is customarily carried on, and that as such agent he often makes parol contracts for present insurance, and hence, such contracts, if within scope of agent's authority, are valid and binding upon insurer he represents. Id. See Dun. Dig. 4704.

Fire insurance company could not avoid liability for a fire loss because it made or permitted a bad choice of agents who kept the premium and did not notify applicant for insurance that application had been rejected. Id. See Dun. Dig. 4704.

3322. Capital stock to be paid in full—Investment of funds.—The capital of every stock company shall be paid in full in cash within six months from the date of its certificate of incorporation, and thereupon a majority of the directors shall certify under oath to the commissioner that such payment in cash has been made by the stockholders for their respective shares, and is held as the capital of the company, and until then no policy shall be issued. Except as otherwise provided by law, the funds of every domestic com-

pany shall be invested in, or loaned upon, one or more of the following kinds of securities or property, and under the restrictions and conditions herein specified, viz:

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.

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, or in notes and bonds, approved by the commissioner, secured by a first mortgage on improved real estate in this or any other state where such notes or bonds do not exceed sixty per cent of the appraised value of the security for the same, provided that such notes or bonds are payable in installments aggregating not less than five per cent of the original principal per annum in addition to the interest; or, are payable on a regular amortization basis in equal installments, including principal and interest, such installments to be payable monthly in such amounts that the debt will be fully paid in not to exceed twenty years if the security is non-agricultural real estate, and such installments to be payable annually or semi-annually in such amounts that the debt will be fully paid in not to exceed twenty-five years if the security is agricultural real estate.

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 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 reinsurance. The making of investments under this sub-division shall be subject to the approval of the commissioner of insurance.

4. Insurance policies, issued by itself, to an amount not exceeding the net or reserve value thereof.

5. 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 4435, Revised Laws of Minnesota for 1913. 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 sub-division shall not at any time exceed 25 per cent of the capital stock of the company.

6. Loans on pledge of any such securities, but not exceeding 80 per cent of the market value of stocks and 95 per cent of the market value of bonds specified in subdivisions 1 and 3; and in all 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. (As amended Apr. 9, 1941, c. 143, §1; Apr. 2, 1943, c. 279, §1.)

3343. Annual statements.

State v. Casualty Mut. Ins. Co., 213M220, 6NW(2d)800; note under §3347, 60.63.

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. If unpaid by such 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. 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 Mason's Minnesota Statutes 1927, 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. 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 departments; provided the existence of such department has been certified to in accordance with Mason's Minnesota Statutes 1927, 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, means any dividend or 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 any portion of premium returned by the company upon cancelation or termination of a policy or membership, except surrender values paid upon the cancelation and surrender of policies or certificates of life insurance.

In the case of a domestic company such sums are in lieu of all other taxes, except those upon real property owned by it in this state, which is taxed the same as like property of individuals, and in the case of a foreign company such sums are in lieu of all other taxes, except those upon real property owned by it

in this state, which is taxed the same as like property of individuals. (As amended Feb. 25, 1943, c. 73, §7.)

A foreign insurance company which does not allege that it has real or personal property in the state is without interest to raise question of constitutionality of two per cent tax on gross premiums on ground that there is a discrimination in favor of domestic companies, who are excused from paying tax on personal property while foreign companies must pay tax on both real and personal property. State v. Casualty Mut. Ins. Co., 213M220, 6NW(2d)800. See Dun. Dig. 9568.

Tax is not a license tax for priviledge of continuing in business, but a tax on premiums for the year during which they were received, and tax is due whether or not a company secures a renewal license. Id.

Insurance premium tax could not be collected from an insurance company licensed to do business in the state on the business of two other companies under receiverships and no longer having licenses to do business in the state, "management reinsurance agreements" giving the management company no present title to the assets of the companies in receiverships. Op. Atty. Gen. (254d), June 14, 1940.

Two year statute of limitations against actions for penalties or forfeitures is not applicable to a tax penalty, and especially a tax penalty upon a privilege tax such as gross premium taxes. Op. Atty. Gen. (254d), Nov. 7, 1940.

There is no tax on considerations received for annuity contracts. Op. Atty. Gen. (254d), Feb. 28, 1941.

Where insurance companies own farms which are operated by the owners and tenants as tenants in common, each owning one-half of the livestock, farm machinery and grain, this personal property can be taxed the same as like property of individuals. Op. Atty. Gen. (254), July 20, 1943.

3347-1. Insurance policies on which premiums are determined by audits.—Any insurance company licensed to do business in this state which issues policies of insurance in this state upon which the premium is determined by means of an audit shall within sixty days from the date of the expiration of any insurance policy so issued request from the insured a statement of the facts and figures necessary to determine the premium thereon. The insured shall furnish such statement of facts and figures within 60 days of the date of the request. Upon failure of the insured to comply with the time specified, then the provisions of this Act shall not apply as to such insured. Within 12 months from the date of the expiration of the policy, or within such longer time as the commissioner of insurance may for cause shown direct, said insurer unless it elects to accept the insured's statement shall make a final audit. Failure to make such final audit within the time herein provided shall constitute a waiver of the insurer's right to make such audit and an election to accept the statement furnished by the insured as a basis for determining the premium on such policy. In the event an audit discloses that the insured submitted to the insurer a fraudulent statement of facts and figures, then the insured shall be liable for three times the normal premium. This act shall not apply to policies issued covering workmen's compensation. (Act Apr. 12, 1943, c. 393, §1.)

[60.103]

PROVISIONS COMMON TO ALL COMPANIES

3348. Definitions.

Insured by accepting and retaining life policy for nearly two years was bound to know its terms, and his beneficiary is estopped from setting up powers in agent in opposition to express limitations contained in policy. Rein v. New York Life Ins. Co., 210M435, 299NW385. See Dun. Dig. 4658, 4706.

Insurer may impose a limitation upon authority of its agent, and if agent exceeds his actual authority and person dealing with him has notice of that fact, principal is not bound. Id. See Dun. Dig. 4706.

Where applicant for insurance gave truthful answers to questions concerning his state of health which without his knowledge were falsified by soliciting agent upon application, insurer is estopped from proving that statements were those of applicant, and this applies to an insurer in a mutual benefit society. Oredson v. Woodmen of the World Life Ins. Soc., 211M442, 1NW(2d)413. See Dun. Dig. 4669.

Where person with whom an insured dealt was a subagent of one expressly authorized to act for fire insurer, insurer could not escape liability for acts of subagent which were within scope of latter's authority and essential in his operative field of action, such as binding the principal upon an oral contract for present insurance, though such subagent had no "express authority" to enter into such an oral contract and was not licensed by the state as agent for such insurer. Rommel v. New Brunswick Fire Ins. Co., 214M251, 8NW(2d)28. See Dun. Dig. 4642a, 4647, 4704.

Persons may solicit applications for insurance upon lives of service men in federal cantonments, forts, naval stations, and training camps within the state, without obtaining a license under this section, if such places are purchased by consent of state legislature and are under control of Congress. Op. Atty. Gen. (249a-1), Mar. 14, 1941.

3352. Qualifications, applications, revocation.

Renewal of license of one writing nearly all of the insurance on his own property and property in which he has an interest involves question of fact and discretion. Op. Atty. Gen. (256), Aug. 30, 1943.

3370. Misrepresentation by applicant.

1. In general.

An insurer is entitled to void a life insurance policy, where assured made material misrepresentations in application. Rice v. N., 207M268, 290NW798. See Dun. Dig. 4673.

Where subsequent developments establish that nondisclosure of previous consultation did increase risk of loss, insurer is entitled to an opportunity to decide for itself whether by that consultation applicant has been removed from class of desirable risks, as against claim that insurer would have issued policy in spite of knowledge that there had been prior consultation. Lawien v. Metropolitan Life Ins. Co., 211M211, 300NW823. See Dun. Dig. 4664.

Improper diagnosis of an ailment by a doctor previously consulted or an underestimation by patient of danger of affliction does not operate to transform serious diseases into trivial ailments for purpose of excusing failure of applicant for life insurance to disclose such prior consultation and treatment. Id. See Dun. Dig. 4673.

Where insured died from same infliction for which there had been previous medical consultation and treatment, false representation by insured upon application that there had been no such consultation or treatment was material and increased risk of loss to insurer. Id. See Dun. Dig. 4673.

3. Acts of agent.

Knowledge of soliciting agent that there had been prior consultation by applicant with doctors could not be charged to insurer where it was acquired outside of scope of his duties. Lawien v. Metropolitan Life Ins. Co., 211M211, 300NW823. See Dun. Dig. 4674.

Where applicant for insurance gave truthful answers to questions concerning his state of health which without his knowledge were falsified by soliciting agent upon application, insurer is estopped from proving that statements were those of applicant, and this applies to an insurer in a mutual benefit society. Oredson v. Woodmen of the World Life Ins. Soc., 211M442, 1NW(2d)413. See Dun. Dig. 4669.

4. Notice of misrepresentation.

False answer in application for life insurance to question whether applicant had consulted doctors during previous five-year period could not be avoided by oral evidence that answer had been inserted by insurer's medical examiner where insured had ability and opportunity to read application before signing a certificate that all answers were true, correct and without exceptions. Lawien v. Metropolitan Life Ins. Co., 211M211, 300 NW823. See Dun. Dig. 4669.

3371-1. Insurance commissioner as receiver.

Where insurance commissioner acts as receiver, if services of an attorney are necessary, he should employ such attorney under authority and direction of the court and fees of the attorney should be paid and allowed by the court as other expenses of the receivership are paid, and attorney general is not required to act, other than in an advisory capacity. Op. Atty. Gen. (250), Sept. 30, 1943.

3371-11. Uniform Insurers Liquidation Act—Application of act.—This act applies to all corporations, associations, societies, orders, partnerships, individuals, and aggregations of individuals, including specifically but not exclusively, reciprocals, inter-insurance exchanges, fraternal beneficiary associations, and township mutual fire insurance companies, to which any section of the insurance laws of this state is applicable, which are subject to examination or supervision under any section of the insurance laws of this state or under this act, or which are doing or attempting to do or representing that they are doing the business of insurance in this state, or which are in process of organization for the purpose of or intending to do such business therein. (Act Apr. 22, 1943, c. 571, §1.)

[60.875]

Adopted in Illinois, New York, Oregon, Rhode Island and South Dakota.

3371-12. Same—Definitions.—Subdivision 1. Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases defined in subdivisions 2, 3, and 4, for the purpose of this act, shall be given the meanings subjoined to them.

Subd. 2. "Insurer" includes all corporations, associations, societies, orders, partnerships, individuals, and aggregations of individuals named in section 1 which are engaged in the business of insurance as principal.

Subd. 3. "Commissioner" means the commissioner of insurance.

Subd. 4. "Assets" includes all property, deposits, and funds, including special and trust funds. (Act Apr. 22, 1943, c. 571, §2.)
[60.875]

3371-13. Rehabilitation of domestic insurers.—The commissioner may apply, in accordance with the provisions of section 22 of this act, for an order directing him to rehabilitate a domestic insurer on one or more of the following grounds; that such insurer

(a) Is insolvent.

(b) Has refused to permit the examination of its books, papers, accounts or affairs by the commissioner or his deputy or his examiners,

(c) Has neglected or refused to observe an order of the commissioner to make good within the time and to the extent prescribed by law any deficiency, whenever its capital or reserves shall have become impaired.

(d) Has, by contract, of reinsurance or otherwise, transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business in the property or business of any other insurer, without having first complied with the provisions of sections 3336 and 3337, Mason's Minnesota Statutes of 1927, or obtained the approval of the commerce commission pursuant to the provisions of section 53-30, Mason's Minnesota Statutes of 1927.

(e) Is found, after an examination, to be in such condition that its further transaction of business will be hazardous to its policyholders, or to its creditors, or to the public,

(f) Has wilfully violated its charter or any law of the state,

(g) Has an officer who has refused to be examined under oath, touching its affairs,

(h) Has ceased to transact business for a period of five years,

(i) Has commenced or attempted to commence or prosecute any action or proceeding to liquidate its business or affairs, or to dissolve its corporate charter, or to procure the appointment of a receiver, custodian, or sequestrator under any law except this chapter,

(j) Has been the subject of an application for the appointment of a receiver, custodian, or sequestrator of the insurer or its property, or if a receiver, custodian or sequestrator, is appointed by a federal court or such appointment is imminent,

(k) Has consented to such an order through a majority of its directors, stockholders, or members, or

(l) Has not organized or obtained a certificate authorizing it to commence the transaction of its business as provided by law. (Act Apr. 22; 1943, c. 571, §3.)
(60.875]

3371-14. Same—Order to rehabilitate.—An order to rehabilitate a domestic insurer shall direct the commissioner forthwith to take possession of the property of such insurer and to conduct the business thereof, and to take such steps toward the removal of the causes and conditions which have made such proceeding necessary as the court directs. (Act Apr. 22, 1943, c. 571, §4.)
[60.875]

3371-15. Commissioner may apply for order of liquidation.—At any time the commissioner deems that further efforts to rehabilitate such insurer will be futile, he may apply to the court for an order of liquidation. (Act Apr. 22, 1943, c. 571, §5.)
[60.875]

3371-16. Grounds for liquidation.—The commissioner may apply, in accordance with section 22 of this act, for an order directing him to liquidate the business of a domestic insurer upon one or more of the grounds specified in section 3, regardless of whether or not there has been a prior order directing him to rehabilitate such insurer. (Act Apr. 22, 1943, c. 571, §6.)
[60.875]

3371-17. Commissioner to take possession of property.—Subd. 1. An order to liquidate the business of a domestic insurer shall direct the commissioner forthwith to take possession of the property of such insurer, liquidate its business, and deal with the property and business of such insurer in his own name as commissioner, or in the name of the insurer, as the court directs, and to give notice to all creditors who may have claims against such insurer to present the same within a specified time.

Subd. 2. The commissioner shall be vested by operation of law with the title to all of the property, contracts, and rights of action of such insurer as of the date of the order to liquidate. The filing for record of a certified copy of such order in the office of the register of deeds of the county in which the order is obtained shall impart the same notice that a deed, bill of sale or other evidence of title duly filed or recorded by such insurer imparts. The rights and liabilities of any such insurer and of its creditors, policyholders, stockholders, members, and other persons interested in its estate shall, unless otherwise directed by the court, be fixed as of the date of the entry of such order in the office of the clerk of the district court of the county wherein obtained. (Act Apr. 22, 1943, c. 571, §7.)
[60.875]

3371-18. May apply to court for order of termination.—The commissioner, or any interested person after due notice to the commissioner, may apply to the court for an order terminating the rehabilitation or liquidation of an insurer and permitting such insurer to resume possession of its property and conduct its business. Such order shall be granted if, after hearing, the court determines that the purposes of the proceeding have been accomplished. (Act Apr. 22, 1943, c. 571, §8.)
[60.875]

3371-19. Grounds for conserving assets.—The commissioner may apply, in accordance with the provisions of this act, for an order directing him to conserve the assets within the state of a foreign insurer upon one or more of the grounds specified in section 3, clauses (a), (b), (c), (d), (e), (f), and (g), or upon the ground that such foreign insurer has been placed in the hands of a receiver, or has had its property sequestrated in any other country or state. (Act Apr. 22, 1943, c. 571, §9.)
[60.875]

3371-20. Commissioner to take possession.—An order to conserve the assets of a foreign insurer shall direct the commissioner forthwith to take possession of the property of such insurer and conserve the same, subject to the further direction of the court. The rights and duties of the commissioner with reference to such insurer and its assets, shall be those heretofore exercised by and imposed upon receivers of foreign corporations in this state. (Act Apr. 22, 1943, c. 571, §10.)
[60.875]

3371-21. Uniformity of rehabilitation.—The purpose of sections 11 to 20, inclusive, is to promote uniformity in the rehabilitation, reorganization, or liquidation of insurers doing business in more than one state. It is intended that such sections shall be liberally construed to the end that as far as possible the assets of such insurers shall be equally and uniformly conserved in all states and that claimants against such insurers shall receive equal and uniform treatment irrespective of places of their residence or of the acts or contracts upon which their claims are based. (Act Apr. 22, c. 571, §11.)
[60.875]

3371-22. What is reciprocal state.—For the purposes of sections 11 to 20, inclusive, a "reciprocal state" is hereby defined to mean a state wherein

(a) It is provided by law that the insurance department or other administrative agency of the state shall conduct or wind up the affairs of delinquent insurers under judicial supervision and shall be vested with title to all of the assets of any domestic insurer therein against which a delinquency proceeding has been commenced, and

(b) In substance and effect the provisions of sections 11 and 20, inclusive, are in force. (Act Apr. 22, 1943, c. 571, §12.)
[60.875]

3371-23. Order shall apply to the administration by the commissioner.—In addition to and notwithstanding any other provisions of law, section 11 to 20, inclusive, shall apply to the administration by the commissioner of the affairs of delinquent domestic insurers with respect to matters affecting or related to reciprocal states and shall also apply to matters affecting or related to this state in the administration by the commissioner of the affairs of delinquent insurers domiciled in reciprocal states and authorized to transact business in this state. (Act Apr. 22, c. 571, §13.)
[60.875]

3371-24. Claims to be filed in this state.—In a proceeding for the rehabilitation, reorganization, or liquidation of a domestic insurer begun in this state, claimants who reside, or whose claims are based upon acts of or contracts with such insurer, in a reciprocal state, shall file their claims in this state pursuant to the laws of this state, but may prove their claims in such reciprocal state. The court in charge of the proceeding in this state shall, if necessary, appoint one or more referees before whom such claims may be proved in such reciprocal state. (Act Apr. 22, 1943, c. 571, §14.)
[60.875]

3371-25. Preference laws not recognized.—In such proceeding against a domestic insurer no law of such reciprocal state regulating and providing for preferences against the general assets of such insurer shall be recognized with respect to the distribution of assets of such insurer regardless of where they may be located, provided the claimants against such insurer in such reciprocal state shall be entitled to receive all preferences allowed by the laws of this state to residents of this state or to claimants against such insurer in this state. (Act Apr. 22, 1943, c. 571, §15.)
[60.875]

3371-26. Purpose of special deposits.—The purposes of special deposits of delinquent domestic insurers made in reciprocal states or of bonds given in lieu of deposits in such states shall be recognized where legal. The commissioner shall apply to courts of competent jurisdiction in reciprocal states for permission to administer such deposits or the proceeds of such bonds in accordance with such purposes and give the security for faithful performance required by such courts. (Act Apr. 22, 1943, c. 571, §16.)
[60.875]

3371-27. Secured and unsecured creditors.—In the liquidation of the general assets of delinquent domestic insurers, unsecured creditors shall be preferred to secured creditors to the extent necessary to equalize the advantage gained by virtue of such security. The following shall be treated as secured claims for the purpose of this section.

(a) Claims secured by adequate process of law or by lien;

(b) Claims secured individually by deposit or money, securities or other property; by money, securities or other property held in escrow or in trust; or by bond;

(c) Claims secured generally by deposit or bond to secure the payment of claims of a particular class, but this provision does not include claims which are secured by deposit or bond for the benefit of all claimants of the company within the United States;

(d) Claims which have been filed with a receiver or liquidator not ancillary to the proceeding in this state.

Any or all of the above shall be treated as unsecured claims, provided all rights to the specific security have been surrendered or the assets in the possession of a non-ancillary receiver or liquidator have been transferred to the commissioner. (Act Apr. 22, 1943, c. 571, §17.)
[60.875]

3371-28. Title to assets.—When a proceeding for rehabilitation, reorganization, or liquidation is commenced in a reciprocal state against an insurer domiciled in such state and doing business in this state, title to all of the assets of such insurer, except special deposits, as hereinafter provided, then located in this state shall vest in the insurance supervisory or other administrative agency of such reciprocal state. Thereafter no action or proceeding against such insurer or such assets, except such special deposits, shall be commenced or continued in the courts of this state unless initiated, or consented to, by such insurance supervisory or other administrative agency of such reciprocal state. (Act Apr. 22, 1943, c. 571, §18.)
[60.875]

3371-29. Special deposits.—Except where it is expressly contrary to the terms of a special deposit or of a bond made in lieu of a deposit in this state of a delinquent insurer domiciled in a reciprocal state, on proper application depositaries shall be directed by a court of competent jurisdiction of this state to transfer the deposit or the proceeds of any bond given in lieu of deposit and all rights thereunder to the insurance supervisory or other administrative agency of the reciprocal state provided that such insurance supervisory or other administrative agency gives proper security for the faithful administration of such funds in accordance with the terms of the trust. (Act Apr. 22, 1943, c. 571, §19.)
[60.875]

3371-30. General assets.—The general assets, located in this state, of a delinquent insurer domicled in a reciprocal state shall be administered by the insurance supervisory or other administrative agency of such reciprocal state as if such assets were located in such reciprocal state. (Act Apr. 22, 1943, c. 571, §20.)
[60.875]

3371-31. Order for dissolution.—The commissioner may apply for an order dissolving the corporate existence of a domestic insurer;

(a) Upon his application for an order of liquidation of the business of such insurer, or at any time after such an order has been granted; or

(b) Upon the grounds specified in section 3, subsections (a) and (1) of this act, regardless of whether an order of rehabilitation is sought or has been obtained. (Act Apr. 22, 1943, c. 571, §21.)
[60.875]

3371-32. Proceedings commenced by application to the District Court.—The commissioner shall commence any proceeding under this act by an application to the district court of the county in which the principal office of the insurer involved is located, if a domestic insurer, and in the district court of Ramsey county in all other cases, for an order directing such insurer to show cause why the commissioner should not have the relief prayed for. On the return of such order to show cause, and after a full hearing, which shall be held by the court without delay, such court shall either deny the application or grant the same together with such other relief as the nature of the case and the interests of policyholders, creditors, stockholders, members, or the public may require. (Act Apr. 22, 1943, c. 571, §22.)
[60.875]

3371-33. Process to be served upon insurer.—The order to show cause and the papers upon which the same is made in any proceeding under this act shall be served upon the insurer named in such order in the manner provided by law for the service of civil process. Reciprocals and interinsurance exchanges and their attorneys in fact shall be served in the manner provided by Mason's Minnesota Statutes of 1927, Section 3590. (Act Apr. 22, 1943, c. 571, §23.)
[60.875]

3371-34. Temporary injunction may be granted.—When it appears by the application for the order to show cause referred to in Section 23 hereof that the commissioner is entitled to the relief demanded, a temporary injunction may be granted restraining the insurer named in the application, its officers, directors, stockholders, members, trustees, agents, servants, employees, policyholders, attorneys, managers, and all other persons, from the transaction of its business or the waste or disposition of its property until the further order of the court. Such injunction may be granted at the time of commencing the proceeding or at any time afterwards during the pendency thereof, and during the pendency of the proceeding the court may issue such other injunctions or orders as may be deemed necessary to prevent interference with the commissioner or the proceeding, or waste of the assets of the insurer, or the prosecution of any actions, or the obtaining of preferences, judgments, attachments, or other liens or the making of any levy against the insurer or against its assets or any part thereof. Such injunctions shall be granted only upon motion or order to show cause but the insurer and other persons named in this section may be restrained by order until the decision of the court or judge, granting or refusing the same. Any such injunction shall be granted upon its appearing satisfactorily to the judge, by affidavit, that sufficient grounds exist therefor. A copy of the affidavit must be served with the injunction. (Act Apr. 22, 1943, c. 571, §24.)
[60.875]

3371-35. Offices may be removed to St. Paul, Minnesota.—At any time after the commencement of a proceeding under this act, the commissioner may with the approval of the court remove the principal office of the insurer to the city of St. Paul, Minnesota. In the event of such removal, the court may, upon the application of the commissioner, direct the clerk of the district court of the county wherein such proceeding was commenced, to transmit all papers filed with such clerk to the clerk of the district court of Ramsey county, and the proceeding shall thereafter be conducted as though commenced in Ramsey county. (Act Apr. 22, 1943, c. 571, §25.)
[60.875]

3371-36. Commissioner may make rules.—For the purpose of giving effect to this act, the commissioner shall have the power, subject to the approval of the court, to make and prescribe such rules and regulations as to him seem necessary and proper. (Act Apr. 22, 1943, c. 571, §26.)
[60.875]

3371-37. Commissoner may appoint special deputy.—For the purposes of this act, the commissioner may appoint special deputy commissioners of insurance as his agents, employ such clerks and assistants as are necessary and give each of such persons such powers to assist him as he deems advisable. The compensation of such special deputies, clerks, and assistants and all expenses of conducting any proceeding under this act shall be fixed by the commissioner, subject to the approval of the court, and, on certificate of the commissioner, be paid out of the funds or assets of the insurer involved. (Act Apr. 22, 1943, c. 571, §27.)
[60.875]

3371-38. Powers and duties of commissioner and deputies.—Subdivision 1. In the discharge of the duties imposed by this act the commissioner, his deputy, or any special deputy appointed pursuant hereto, shall have power to administer oaths and affirmations, take deposition, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records deemed necessary as evidence in connection with a disputed claim or the administration of the act.

Subd. 2. In case of contumacy by, or refusal to obey a subpoena issued to any person, any court of this state within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the commissioner, his deputy, or special deputy, shall have jurisdiction to issue to such person an order requiring such person to appear before the commissioner, or his deputy, there to produce evidence if so ordered or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof. (Act. Apr. 22, 1943, c. 571, §28.)
[60.875]

3371-39. Same—Evidence.—No person shall be excused from attending and testifying or from producing books, papers, correspondence, memoranda, and other records before the commissioner or his deputy, or special deputy or in obedience to the subpoena of the commissioner, his deputy, or special deputy, on the grounds that the testimony or evidence, documentary or otherwise, required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination to testify or produce evidence, documentary or otherwise, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying. (Act Apr. 22, 1943, c. 571, §29.)
[60.875]

3371-40. Same—Deposit of funds.—The moneys collected by the commissioner in a proceeding under this act shall be from time to time deposited in one or more state or national banks, savings banks, or trust companies, and in the case of the insolvency or the voluntary or involuntary liquidation of the depositary, such deposits shall be entitled to priority of payment on an equality with any other priority given by the banking law. Such money may be deposited in a national bank or trust company as a trust fund. (Act Apr. 22, 1943, c. 571, §30.)
[60.875]

3371-41. Liens—When created.—Any transfer of, or lien upon, the property of an insurer made or created within three months prior to the granting of

an order to show cause under this act with intent to give to any creditor, or of enabling him to obtain, a greater percentage of his debt than any other creditor of the same class which is accepted by such creditor having reasonable cause to believe that such a preference will occur, is voidable. (Act Apr. 22, 1943, c. 571, §31.)
[60.875]

3371-42. Officers directly liable in certain cases.—Each director, officer, employee, stockholder, member, or other person acting knowingly on behalf of such insurer concerned in making any transfer or creating any lien made voidable by Section 31, is personally liable therefor and is bound to account to the commissioner as liquidator. (Act Apr. 22, 1943, c. 571, §32.)
[60.875]

3371-43. Commissioner may avoid transfers.—The commissioner as liquidator may avoid any transfer of, or lien upon, the property of an insurer which any creditor, stockholder, or member of such insurer might have avoided and receive the property so transferred, or its value, from the person to whom it was transferred unless he was a bona fide holder for value prior to the date of the entry of the order of liquidation. (Act Apr. 22, 1943, c. 571, §33.)
[60.875]

3371-44. Wages to have priority.—All wages actually owing to employees of an insurer, against whom a proceeding under this act is commenced, for services rendered within three months prior to the commencement of such proceeding, not exceeding $300.00 to an employee, shall be paid prior to the payment of other debts or claims and, subject to the direction of the court, as soon as possible after the proceedings have been commenced. Sufficient funds shall be reserved at all times for the expenses of administration. (Act Apr. 22, 1943, c. 571, §34.)
[60.875]

3371-45. Mutual debits and credits.—In all cases of mutual debits or mutual credits between the insurer and another person, such credits and debits shall be set-off and the balance only allowed or paid. No set-off shall be allowed in favor of any such person, where:

(a) The obligation of the insurer to such person would not then entitle him to share as a claimant in the assets of such insurer; or

(b) The obligation of the insurer to such person was purchased by or transferred to such person with a view of its being used as a set-off; or

(c) The obligation of such person is to pay an assessment levied against the members of a mutual insurer or to pay a balance upon a subscription to the capital stock of a stock corporation insurer. (Act Apr. 22, 1943, c. 571, §35.)
[60.875]

3371-46. Commissioner may dispose of assets.—The commissioner may, subject to the approval of the court:

(a) Sell or otherwise dispose of the real and personal property, or any part thereof, of an insurer against whom a proceeding has been brought under this act.

(b) Sell or compound all doubtful or uncollectible debts or claims owed by or owing to such insurer, including claims based upon an assessment levied against a member of a mutual insurer; provided, that when the amount of any such debt or claim owed by or owing to such insurer does not exceed $200.00, the commissioner may compromise or compound the same upon such terms as he deems for the best interest of such insurer without obtaining the approval of the court. (Act Apr. 22, 1943, c. 571, §36.)
[60.875]

3371-47. May borrow money.—For the purpose of facilitating the rehabilitation, liquidation, conservation, or dissolution provided for by this act, the commissioner may, subject to the approval of the court, borrow money and execute, acknowledge, and deliver notes or other evidences of indebtedness therefor and secure the repayment of the same by the mortgage, pledge, assignment, transfer in trust, or hypothecation of any or all of the property of an insurer against whom a proceeding has been brought under this act, and the commissioner, subject to the approval of the court, may take any and all other action necessary and proper to consummate any such loans and provide for the repayment thereof. The commissioner shall be under no obligation personally or in his official capacity as commissioner of insurance to repay any loan made pursuant to this section. (Act Apr. 22, 1943, c. 571, §37.)
[60.875]

3371-48. Commissioner to make report to court within the year.—Within one year from the date of the entry of an order of rehabilitation or liquidation of a domestic mutual insurer in the office of the clerk of the district court of the county in which such insurer had its principal office, the commissioner shall make a report to the court setting forth:

(a) The reasonable value of the assets of such insurer;

(b) Its probable liabilities; and

(c) The probable necessary assessment, if any, to pay all allowed claims in full.

Upon the basis of such report, including amendments thereof, the court may levy assessments against all members of such insurer against whom the board of directors of such insurer might have levied an assessment upon the date of the issuance of the order to show cause in the special proceeding pending against such insurer. Such assessments shall cover the excess of the probable liabilities over the reasonable value of the assets, together with the cost of collection and the probable percentage of uncollectibility thereof, but the total of all such assessments against any member shall not exceed the maximum amount fixed in the contract of that member.

The court may thereupon issue an order directing each member of such insurer, if he does not pay the amount assessed against him to the commissioner on or before a day to be specified in the order, to show cause in the special proceeding pending against such insurer why he should not be held liable to pay such assessments, together with the costs set forth in this section, and why the commissioner should not have judgment therefor. The commissioner shall cause a notice of such order setting forth a brief summary of the contents of such order to be served on each member in such manner as the court directs.

On the return day of such order to show cause (a) if such member does not appear and serve verified objections upon the commissioner, the court shall make its order adjudging that such member is liable for the amount of such assessment together with $10.00 costs, and that the commissioner may have judgment against such member thereof; (b) if such member appears and serves verified objections upon the commissioner there shall be a full hearing of the matter by the court. After such hearing, the court shall make its order either negativing the liability of such member to pay the assessment or affirming his liability to pay the whole or some part thereof together with $10.00 costs and necessary disbursements incurred at the hearing, and directing that the commissioner in the latter case may have judgment therefor.

A judgment upon any such order shall have the same force and effect as a judgment in an original action brought in the court in which the special proceeding is pending, and be entered, docketed, and ap-

pealed from, as is such a judgment. (Act Apr. 22, 1943, c. 571, §38.)
[60.875]

3371-49. Involvent insurer—Procedure.—If upon the granting of an order for the liquidation of a domestic insurer, or at any time thereafter during such liquidation proceeding, it shall appear that the insurer is not solvent, the court shall, after such notice and hearing as it deems proper, make an order declaring such insurer to be insolvent. Thereupon, regardless of any prior notice which may have been given to creditors, the commissioner shall notify all persons who have claims against such insurer and who have not filed proper proofs thereof, to present the same to him at the place specified in such notice within four months after the date of the entry of such order, or some longer time if so directed by the court. The last day for the filing of proofs of claim shall be specified in the notice. Such notice shall be given in a manner determined by the court.

No claim or demand shall be received or allowed after the expiration of the time so limited, except by permission of the court for good cause shown, and upon notice to the commissioner, but in no case unless presented within 18 months from the date of the order of liquidation and before final settlement. (Act Apr. 22, 1943, c. 571, §39.)
[60.875]

3371-50. Proof of claim.—A proof of claim shall consist of a verified written statement, signed by the claimant, setting forth the claim, the consideration therefor, the securities held therefor, if any, the payments made thereon, if any, and that the sum claimed is justly owing from the insurer to the claimant. When a claim is founded upon a written instrument such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed a statement of such fact and of the circumstances of such loss or destruction shall be filed under oath with the claim. (Act Apr. 22, 1943, c. 571, §40.)
[60.875]

3371-51. To make list of policyholders.—Upon the liquidation of any domestic insurer which has issued policies insuring the lives of persons, the commissioner shall, within 30 days after the last date set for the filing of claims, make a list of the persons who have not filed proofs of claim with him to whom, it appears to his entire satisfaction from the books of the insurer, there are owing amounts on such policies, and set opposite the name of each such person the amount so owing to him. Each person whose name appears upon such list shall be deemed to have duly filed prior to the last day set for the filing of claims a proof of claim for the amount set opposite his name on the list. (Act Apr. 22, 1943, c. 571, §41.)
[60.875]

3371-52. Contingent claims not to share in distribution—Exceptions.—No contingent claim shall share in the distribution of the assets of an insurer which has been adjudicated to be insolvent by an order made pursuant to section 42 except such claim shall be considered, if properly presented, and may be allowed to share where such claim becomes absolute against the insurer on or before the last day fixed for the filing of proofs of claim against the assets of such insurer or there is a surplus and the liquidation is thereafter conducted upon the basis that such insurer is solvent. (Act Apr. 22, 1943, c. 571, §42.)
[60.875]

3371-53. Secured claims.—Where an insurer is adjudicated to be insolvent by an order made pursuant to section 42, any person having a cause of action against an assured of such insurer, which is the subject of indemnity under a liability policy issued by such insurer, or the assured in any such case, shall have the right to file a claim in the liquidation proceeding, even though such claim is a contingent one and such claim may be allowed, provided:

(a) That it may be reasonably inferred from the proof presented upon such claim that a judgment could be obtained upon such cause of action against such insured;

(b) That suitable proof be furnished that no further valid claims against such insurer arising out of such causes of action other than those already presented can be made unless, for good cause shown, the court in which the proceeding is pending shall otherwise direct; provided that no such claim filed by the assured or proof furnished by him in support thereof shall be received in evidence against him or his insurer in any action against him or his insurer upon such cause of action, nor shall the filing of any such claim or proof thereof by such assured be construed as a violation of any of the terms or conditions of said policy;

(c) That the total liability of such insurer to all claimants arising out of the same act of its assured shall be no greater than its total liability would be were it not in liquidation.

(d) That no judgment taken by default, or by collusion, against such an assured be considered as evidence in the liquidation proceeding either of the liability of such assured to such person upon such cause of action or of the amount of damages to which such person is therein entitled. (Act Apr. 22, 1943, c. 571, §43.)
[60.875]

3371-54. Amount of claim allowed.—No claim of any secured claimant shall be allowed at a sum greater than the difference between the value of the security and the amount for which the claim is allowed, and then only subject to the provisions of section 17 of this act, unless the claimant surrenders his security to the commissioner in which event the claim shall be allowed in the full amount for which valued. (Act Apr. 22, 1943, c. 571, §44.)
[60.875]

3371-55. Dividends may be paid.—Subdivision 1. Any time after the last day fixed for the filing of proofs of claim in the liquidation of a domestic insurer, the court may, upon the application of the commissioner, authorize him to declare out of the funds remaining in his hands, after the payment of expenses, one or more dividends. Such order shall specify what claims, if any, are entitled to priority of payment and direct the manner in which dividends shall be paid.

Subd. 2. Where there has been no adjudication of insolvency, the commissioner shall pay all allowed claims in full and distribute the balance of the assets remaining in his hands in accordance with the direction of the court. The commissioner shall not be chargeable to a claimant who failed to file a proper proof of claim before such distribution was made for any assets so distributed. (Act Apr. 22, 1943, c. 571, §45.)
[60.875]

3371-56. Unclaimed dividends to be paid into court.—The commissioner shall pay to the court, in which the liquidation proceedings were held for the benefit of claimants, all dividends remaining unclaimed or unpaid in his hands for six months after the final order of distribution and, thereafter, such dividends shall be subject to the provisions of section 7306, Mason's Minnesota Statutes of 1927. (Act Apr. 22, 1943, c. 571, §46.)
[60.875]

3371-57. Orders made upon petition of commissioner.—No order, judgment, or decree providing for an accounting or enjoining, restraining, or interfering with the prosecution of the business of any domestic insurer to which any provision of this act is applicable,

or for the appointment of a temporary or permanent receiver thereof, shall be made or granted otherwise than upon the petition of the commissioner as provided in this act except in an action by a judgment creditor in proceedings supplementary to execution after notice has been served upon the commissioner of such judgment at least 30 days prior to the filing of a petition for that purpose. (Act Apr. 22, 1943, c. 571, §47.)
[60.875]

3371-58. Not to amend existing laws.—None of the provisions of this act shall be considered an amendment of existing laws as to the examination of township mutual fire insurance companies. (Act Apr. 22, 1943, c. 571, §48.)
[60.875]

LIFE INSURANCE COMPANIES

3376. Discrimination in accepting risks.
Discrimination as between charter and non charter policies. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.
Statute prohibits discrimination against single premium life policies with respect to loan or surrender charge. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409. See Dun. Dig. 4816.
"Charter" policies containing provisions for distribution as dividends of divisible profits, which prevented exercise of a reasonable discretion by board of directors as to how much of earnings and profits should be allocated to divisible surplus, held discriminatory against other participating policies based on same mortality tables and assumption of interest. Lommen v. Modern Life Ins. Co., 212M577, 4NW(2d)639. See Dun. Dig. 4645aa, 4808.
Trial court's plan for accounting and adjusting discrimination in favor of "charter" policies, as against other participating policies, based on the "net cost" theory and its imposition of a lien on the earnings of the "charter" policies was sustained. Id.

3377. Discrimination, rebates, etc.
Lommen v. Modern Life Ins. Co., 212M577, 4NW(2d)639; note under §3376.
Discrimination as between charter and non charter policies. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.
Statute prohibits discrimination against single premium life policies with respect to loan or surrender charge. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409. See Dun. Dig. 4816.
This section is not violated by a scheme whereby finance company purchases livestock for farmer who takes out life insurance and gives a note or notes to cover both premium and cost price of livestock. Op. Atty. Gen. (5K), Dec. 9, 1940.

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.

(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 fifty per cent more than 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 are 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.

(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. (As amended Apr. 9, 1941, c. 140, §1.)

3387. Who entitled to proceeds of life policy.

Where judgment creditors garnished bank to which judgment debtor had pledged insurance policies and other chattels and paid the bank amount of its debt, judgment creditors were subrogated to rights of bank and to possession of insurance policies as well as other chattels, and sheriff levying upon such other chattels under execution and obtaining possession of insurance policies had a right to retain possession in action in replevin by owners of policies, notwithstanding that insurance policies are exempt from execution, though pledgor might have right in case of forced sale to insist that nonexempt items be sold first. Braman v. Wall, 210 M548, 299NW243. See Dun. Dig. 3689.

3388. Exemption in favor of family, etc.

In replevin to recover exempt life insurance policies and assignments thereof, which with nonexempt securities had been seized by sheriff under levy of executions against insured while such policies and securities were held by a bank as collateral to a loan to the insured, and in which sheriff paid off bank's lien with money furnished him by judgment creditor's attorney, who now claims that his action was without knowledge or consent of his clients, and no evidence was offered that either judgment creditors or any other person now claims an interest in the policies or assignments, insured is entitled to possession of policies and assignments from the sheriff, and it was error to make recovery dependent, upon payment by insured of an amount used to lift bank's lien in excess of money recovered from non-exempt securities. Breman v. Wall, 214M238, 7NW(2d)924. See Dun. Dig. 3689.

3389. Annual apportionment and accounting of surplus on policies.

Provisions for distribution as dividends of divisible profits contained in participating life insurance policies designated by company as "charter" policies, which prevented the exercise of a reasonable discretion by the board of directors as to how much of earnings and profits should be allocated to divisible surplus, were invalid under this section. Lommen v. Modern Life Ins. Co., 212 M577, 4NW(2d)639. See Dun. Dig. 4645aa, 4808.

Trial court's plan for accounting and adjusting discrimination in favor of "charter" policies, as against other participating policies, based on the "net cost" theory and its imposition of a lien on the earnings of the "charter" policies was sustained. Id.

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

Section does not apply to single premium policies by reason of its subject matter. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409.

3394. Annual apportionment of surplus on existing policies.

Where life insurance company in settlement of litigation with a stockholder purchased latter's stock at more than twice its par value and real value, and later retired the stock, there was a "loss on investment" which was properly allocated between charter and non charter policies on fund ratio basis under applicable formula. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.

A life insurance company suffering legal expenses in litigation with holder of a charter policy concerning dividends or profits, such expense was correctly apportioned by company between charter and non charter policies by fund ratio. Id. See Dun. Dig. 4808.

Life insurance company under its agreement with charter policyholders should have accounted for item of rent for branch offices as an item of branch office expense and not as a general item of rent. Id. See Dun. Dig. 4808.

3398. Policies.

Discrimination as between charter and non charter policies. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.

3399. Forms.

½. Construction of contract in general.

In determining whether an insurance policy has been delivered to the applicant at the time of his death, court is limited to considering the status of the contract and arrangement between the parties which existed prior to the death. Rogers v. Great-West Life Assur. Co., (DC-Minn), 48Supp86. See Dun. Dig. 4654.

A conditional delivery of an insurance policy by the home office of the company to its agent is not a delivery to an applicant. Id. See Dun. Dig. 1736, 4654.

Discrimination as between charter and non charter policies. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.

Statutes concerning forms of, and provisions to be included in, life insurance policies are in pari materia and so to be construed together in order to make them work harmoniously and effectuate their purposes. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409. See Dun. Dig. 4807.

While ambiguous language should not be permitted to serve as traps for policyholders, provisions which are clearly and definitely set forth in appropriate language and upon which calculations of insurer are based should be maintained unimpaired. Rein v. New York Life Ins. Co., 210M435, 299NW385. See Dun. Dig. 4659.

Where there is no ambiguity in provisions of insurance policy, there is no occasion for resort to familiar principle that equivocal words should be construed against insurer. Id.

Terms of a contract of insurance must be maintained where there is no ambiguity in its provisions. Wilson v. Travelers Ins. Co., 214M379, 8NW(2d)236, 145ALR939. See Dun. Dig. 4659.

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

Cancellation of group insurance policy by act of employer and insurance company without employee's consent. 25MinnLawRev954.

Delivery of a life insurance policy for conflict of law purposes. 26MinnLawRev50.

2. Payment of premiums.

Cash reserves, dividends, or prepaid premiums on old insurance policies held by an applicant for a new policy would not be considered as applying to the premium on a new policy in the absence of some authorization by the applicant to so apply them. Rogers v. Great-West Life Assur. Co., (DC-Minn), 48FSupp86. See Dun. Dig. 4816.

A continuous premium deferred life annuity policy became operative when money equal to all premiums to be paid was delivered to and accepted by an agent authorized to receive it, though agent embezzled the money. Blumberg v. Taggart, 213M39, 5NW(2d)388. See Dun. Dig. 4816.

3. Permanent and total disability.

For provisions of accident and health insurance in general see §§3415 to 3427.

Walsh v. U. S., (DC-Minn), 24FSupp877. App. dis., (CCA8), 106F(2d)1021.

Section 3417(7)(C)(7) does not conflict with terms of an accident and health insurance policy within a life insur-

ance policy which makes obligation to pay disability insurance dependent upon receipt of proof of insured's total and permanent disability as construed in Floyd M. Andrews, Inc. v. Aetna Life Ins. Co., 198Minn1, 268NW 415, 106ALR1085; Barron v. Equitable Life Assur. Soc., 197M367, 266NW845; and Berke v. New York Life Ins. Co., 293NW248. Lindskog v. E., 295NW70. See Dun. Dig. 4874c.

A letter from insurer to administratrix of insured respecting total disability prior to death of insured held not a waiver of notice required by §3417(4)(C)(4). Id.

Mere inability to perform acts essential to accustomed profession or occupation does not, under Illinois law, constitute total disability. Preveden v. M., 206M393, 289NW 46. See Dun. Dig. 4871c.

Doctrine of avoidable consequences does not operate to compel plaintiff to submit to medical treatment. Miller v. M., 206M221, 289NW399. See Dun. Dig. 4871c.

Insured claiming to be disabled by diabetes, has no duty to take insulin to remove the effect of the illness. Id. See Dun. Dig. 4871c.

Word "impossible" in policies defining "total disability" refers to nature of disability with reference to capacity to carry on gainful employment, and does not require insured to submit to medical treatment in an effort to remove disability. Id. See Dun. Dig. 4871c.

Under life insurance policy providing that "first income payment shall become due on the first day of the calendar month following receipt of proof of total and permanent disability," insured was not entitled to disability benefits for period between the date of disability and date of proof. Berke v. N., 208M210, 293NW248. See Dun. Dig. 4871c.

Life insurer did not waive notice or proof of total disability because local agent informed insured and beneficiary that total disability did not exist and that company if application were made would not grant waiver of premium. Rein v. New York Life Ins. Co., 210M435, 299 NW385. See Dun. Dig. 4875.

Disability feature of life policy included in its coverage appearance of permanent disability as well as actual permanent disability. Wheeler v. Equitable Life Assur. Soc., 211M474, 1NW(2d)593. See Dun. Dig. 4871c.

Application of health and accident code to life policies is affected by Laws 1935, c. 75, Mason St., 1940 Supp., §3426(2). Id.

Whether insured, who became demoralized and disabled on discovering presence of cataracts in his eyes and did not serve notice of disability until a year later and after two operations and recovery, furnished notice as soon as reasonably possible, held for jury. Id. See Dun. Dig. 4874c.

Where notice of disability was not given until 38 days after total disability ceased, insured in a life policy issued in 1925 could recover under health and accident code as if he had furnished notice in accordance therewith if it was not reasonably possible to furnish notice earlier and notice was furnished as soon as was reasonably possible. Id. See Dun. Dig. 4874c.

4. Double indemnity.

While part of life insurance policy concerning accidental death benefits must be construed and applied as written, any construction so unduly restrictive that it would defeat ends of accident insurance must be avoided. Wolfangel v. P., 209M439, 296NW576. See Dun. Dig. 4872.

In action by beneficiary in life policy for accidental death benefits it was incumbent upon plaintiff to prove that death resulted solely from accidental causes. Id. See Dun. Dig. 4875.

Where 12 days after an accidental fall, insured, a man of good health and vigor, was dead from syphilis, symptoms of which were not manifest before fall, in suit to recover accidental death benefits, whether death resulted directly and independently of all other causes from bodily injuries effected solely through external violent and accidental causes was for jury. Id. See Dun. Dig. 4871a.

Testimony that insured was seen to fall while cranking car, a bruise was found on his cheek, and that a stethoscope examination several weeks prior thereto indicated heart was in good condition was insufficient upon which to predicate a recovery for death as a result, directly and independently of all other causes, of bodily injuries sustained through external, violent and accidental means, not caused by or contributed to, directly or indirectly, or wholly or partly by disease, or by bodily or mental infirmity. Plotke v. Metropolitan Life Ins. Co., 210M541, 299NW216. See Dun. Dig. 4873.

5. Proof of loss.

When beneficiary in accident policy must show death as result of bodily injury effected solely through external, violent and accidental means, he has the burden of excluding suicide, though ordinarily in life insurance cases, where suicide operates as exception from or avoidance of the policy, burden to show suicide is upon insurer. Ryan v. M., 206M562, 289NW557. See Dun. Dig. 4811.

Purpose of requiring prompt furnishing of proof of loss under any policy of insurance is to provide insurer with such information as will permit it to investigate the facts and determine whether there is liability. Rein v. New York Life Ins. Co., 210M435, 299NW385. See Dun. Dig. 4875.

7b. Change of beneficiary.

Where life insurance policy provided for payment of annual installments to insured's wife, an irrevocable beneficiary, and that if named beneficiary should die before first payment became due, then entire interest in policy should inure to insured or his legal representatives, who should have option at his death of commuting the present value of all future installments, and wife died before insured, who with insurer's consent, designated a daughter and son-in-law as beneficiaries, and "the survivor of them", subsequent beneficiaries could recover commuted value of policy and were not required to accept payment in installments. Wilson v. Travelers Ins. Co., 214M379, 8NW(2d)236, 145ALR939. See Dun. Dig. 4813a.

7d. Forfeiture.

Courts will be vigilant to discover and give effect to any act or circumstance from which it may be fairly argued that insurer has waived the right to strict and literal performance by assured or upon which estoppel against such defense may be founded. Wait v. Journeymen Barbers' International Union, 210M180, 297NW630. See Dun. Dig. 4676, 4841.

9½. Action on policy.

Construction of statute imposing damages upon insurance company for vexatious refusal to pay policy. New York Life Ins. Co. v. C., (CCA8), 114F(2d)526. Cert. den. 61SCR141.

There being no claim that procurement of insurance policy indicated an intention of suicide on part of insured (he being dead and suicide the issue), it was not error to exclude evidence that he habitually carried life insurance to amount of policy. Scott v. P., 207M131, 290 NW431. See Dun. Dig. 4811.

On issue of suicide, two audits of accounts of deceased in conduct of oil stations were properly admitted. Id. See Dun. Dig. 4811.

In action on life policy when recovery is sought for accidental death burden of proof is on beneficiary to establish that death comes within terms and condition of double indemnity clauses. Plotke v. Metropolitan Life Ins. Co., 210M541, 299NW216. See Dun. Dig. 4875.

11. War risk insurance.

Claim for benefits held filed within limitations requirements of act, by letter from county judge who was also service officer of legion post, asking for designated forms, informing bureau of veteran's death, and stating "Claim filed by beneficiary," where letter was followed by formal proof with dispatch and government was not prejudiced. U. S. v. Wallace, (C.C.A.10), 123 F. (2d) 484. See Dun. Dig. 510c.

12. Group insurance.

Provision for extended life insurance in group policy, in case of termination of employment of insured, began to run from time that he received employer's letter notifying him of his discharge. Geisenhoff v. J., 209M223, 296NW4. See Dun. Dig. 4816a.

In an action upon a group insurance policy evidence held insufficient to warrant a finding that insured was an employee at the time of his death by suicide. Roberts v. Metropolitan Life Ins. Co., 215M300, 9NW(2d)730. See Dun. Dig. 4808aa.

3400. Exceptions.

Statutory limitation of a loan or surrender charge is applicable to single premium policies. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409. See Dun. Dig. 4645a.

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

3402. Provisions which must be included.

(3).

Commissioner of insurance may accept for filing aviation exclusion riders which limit exclusion of aviation risks to first two years in which policy is in force. Op. Atty. Gen. (253a-11), July 22, 1941.

(6).

Discrimination as between charter and non charter policies. Lommen v. M., 206M608, 289NW582. See Dun. Dig. 4808.

(7).

Limitation of a loan or surrender charge to 2½ per centum of amount insured is applicable to single premium life policies. John Hancock Mut. Life Ins. Co. v. Y., 209M82, 295NW409. See Dun. Dig. 4659a.

(8).

Commissioner should refuse to approve a form of single premium life policy containing a provision for a surrender charge in excess of 2½% of face amount of policy, modifying Op. Atty. Gen., June 24, 1935. Op. Atty. Gen., (253a-9), Feb. 9, 1940.

3405-1. Life insurance companies may issue policies containing certain provisions.—Policies of life insurance may be issued in this state and may be issued by life insurance companies organized under the laws of this state which limit the amount to be paid in the event of death occurring as a result of aviation or aeronautics under circumstances specified in the policy, except as a result of riding as a fare-paying passenger of a commercial air line operating on a regularly scheduled route between definitely established airports. Such amount shall not be less than the re-

serve on the policy plus any dividends standing to the credit of the policy and the reserve for any paid-up additions, less any indebtedness to the company on the policy. Such limitation may be made by a provision in the policy or by a rider made a part thereof provided, that when said limitation is made, whether by provision in the policy or by a rider, that the same shall be read to the insured, its effect explained to the insured, and a statement that the same has been read and explained countersigned by the insured. (Act Mar. 19, 1943, c. 156, §1.)
[61.335]

3406. Provisions which no policy may include—Limited coverage.—

Editorial note.—This section as amended by Laws 1941, c. 218, §1, is omitted because held unconstitutional by the supreme court.

Laws 1941, c. 218, amending Mason's Minn. St., §3406, was not properly passed and is invalid. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8895.

An action is pending in the Ramsey County District Court to determine constitutionality of Laws 1941, c. 218, which purport to authorize aviation exclusion provision (Minn. Mutual Life Ins. Co. v. Johnson). Op. Atty. Gen. (253a-11), July 22, 1941.

Commissioner of insurance may accept for filing aviation exclusion riders which limit exclusion of aviation risks to first two years in which policy is in force. Id.

STOCK AND MUTUAL LIFE INSURANCE COMPANIES

3414-5. Domestic insurance corporations may become mutual corporations in certain cases.—Any domestic insurance corporation heretofore or hereafter incorporated for the transaction of the kinds of business authorized and permitted by subdivision 4 Section 3315 Mason's Minnesota Statutes 1927, and having capital stock may become a mutual corporation and to that end may formulate and carry out a plan for the acquisition by it of its outstanding capital stock, and for the mutualization of such corporation, as follows:

(a) Such plan shall have been adopted by vote of a majority of the directors of such company.

(b) Such plan shall have been submitted to the Commissioner of Insurance and shall have been approved by him as conforming to the requirements of this act and as not prejudicial to the policyholders of such company or to the insuring public.

(c) Such plan shall have been approved by a vote of stockholders representing a majority of the outstanding capital stock at a meeting of stockholders called for that purpose. Stockholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least thirty days prior to such meeting in a sealed envelope, postage prepaid, directed to each stockholder at his address as shown on the stock records of the company.

(d) Such plan shall have been approved by a majority of the votes cast by policyholders (whether or not members) who vote at a meeting called for that purpose. Eligibility of policyholders, whether or not members of the company, and the number of votes to which each is entitled, shall be determined by the laws of Minnesota relating to the rights of members of domestic mutual life insurance companies to vote at company meetings. Policyholders may vote in person or by proxy filed with the company at least five days before the meeting at which it is to be used. Notice of such meeting shall be given by mailing such notice from the home office of such company at least thirty days prior to such meeting in a sealed envelope, postage prepaid, directed to each policyholder at his address as shown on the policy records of the company. Such meeting shall be conducted in such manner as may be provided for in such plan, with the approval of the Commissioner of Insurance. The Commissioner shall supervise and direct the methods and procedure of said meeting and shall appoint an adequate number of inspectors to conduct the voting at said meeting, who shall have power to determine all questions concerning the verification of the ballots, the ascertaining of the validity thereof, the qualifications of the voters and the canvass of the vote. Such inspectors, or any one thereof designated by the Commissioner, shall certify to the Commissioner and to such company the result of such vote, and with respect thereto shall act under such rules as shall be prescribed by the Commissoner. All necessary expenses incurred by the Commissioner, or incurred with his approval by the inspectors appointed by him, shall be paid by such company upon the certificate of the Commissioner.

(e) Approval of the plan by stockholders and policyholders as above provided may be given at a joint meeting thereof.

(f) Such plan may specify the purchase price to be paid by such company for shares of its capital stock, and in such case the price so specified shall be adhered to. If such plan does not specify the price to be paid for such shares, such company shall first obtain the approval of the Commissioner for every payment made for the acquisition of any shares of its capital stock.

(g) Such plan may authorize the board of directors of the company to provide for participation in the surplus of the company by holders of policies which do not by their terms provide for such participation or which provide for a limited participation only, and may include appropriate proceedings to confer upon policyholders the right to vote at meetings of the company. Policyholders upon whom the right to vote is so conferred shall have the same voting rights and shall be entitled to the same notice of annual meeting as members of domestic mutual life insurance companies.

(h) Before approving any such plan or any such payment, the Commissioner shall be satisfied, by such investigation as he may make or such evidence as he may require, that such company, after deducting the aggregate sum appropriated by such plan for the acquisition of any part or all of its capital stock, and in the case of any payment not fixed by such plan and subject to approval as aforesaid, after deducting also the amount of such payment, will be possessed of admitted assets in an amount equal to the sum of (1) and (2) as follows:

(1) Its entire liabilities, including the net value of its outstanding contracts computed as provided by law, and (2) the contingency reserve deemed by the Commissioner necessary to protect its policyholders and the insuring public, in view of the past experience of such company, the character of its assets, its present management and its probable future earnings.

The Commissioner's action in refusing to give any approval required by this section shall be subject to review by any court of competent jurisdiction.

Such plan may be amended by vote of stockholders representing a majority of the outstanding capital stock and by a majority of the votes cast by policyholders who vote at the meeting, but in such case the plan shall not become effective until approved, as amended, by vote of a majority of the directors of such company and by the Commissioner of Insurance. (Act. Mar. 30, 1943, c. 231, §1.)
[61.461]

3414-6. May acquire capital stock.—In pursuance of any plan such company shall have power, and shall be privileged, to acquire any shares of its capital stock by gift, bequest, or purchase. Until all of the shares of its outstanding capital stock are acquired, any shares so acquired shall be taken and held in trust for all the policyholders of such company, as hereinafter provided, and shall be assigned and transferred on the books of the company to three trustees, who shall be named in such plan and shall be approved by the Commissioner. All shares held by such trustees

shall be deemed admitted assets of such company at their par value. Such trustees, who may be directors of the company, shall vote all shares so acquired and held by them at all corporate meetings in accordance with the majority vote of policyholders voting on any question before the meeting. When all of the outstanding capital stock of any such corporation shall have been acquired, the entire capital stock of such corporation shall be retired and canceled and thereupon such corporation shall be and become a mutual life insurance company without capital stock. The plan of conversion formulated pursuant to Section 1 of this act shall provide for the method of filling vacancies among such trustees. Before undertaking any of the duties of his appointment each trustee shall file with the company a verified acceptance of his appointment and a declaration that he will faithfully discharge his duties as such trustee. All dividends and other sums received by such trustees on the shares of stock so acquired by them shall, after paying the necessary expenses of executing the trust, be immediately repaid to such company for the benefit of all who are or may become policyholders of such company and entitled to participate in the profits or savings thereof. (Act Mar. 30, 1943, c. 231, §2.) [61.462]

ACCIDENT AND HEALTH INSURANCE

3417. Standard provisions.

For cases construing total disability clauses in life insurance policy, see §3399, note 3.

1. In general.

Where express provisions of insurance policies do not require insured to submit to medical treatment, there is no duty on insured to undergo it as a condition precedent to recovery of disability benefits. Miller v. M., 206M221, 289NW399. See Dun. Dig. 4871c.

There could be no recovery under an accident policy where death occurred from overexertion in cranking an automobile without slipping, falling, or other unexpected, unusual, or unforeseen occurrence in chain of events leading up to death. Gidlund v. Benefit Ass'n of Ry. Employees, 210M176, 297NW710. See Dun. Dig. 4871a.

1½. Accident and disability clauses in life policies.

See notes under §3399, note 3.

Where twelve days after an accidental fall, insured, a man of good health and vigor, was dead from syphilis, symptoms of which were not manifest before fall, in suit to recover accidental death benefits, whether death resulted directly and independently of all other causes from bodily injuries effected solely through external violent and accidental causes was for jury. Wolfangel v. P., 209M439, 296NW576. See Dun. Dig. 4871a.

Laws 1935, c. 74, Mason St. 1940, Supp, §3426(2), has apparently made health and accident code inapplicable to life policies containing disability clauses. Wheeler v. Equitable Life Assur. Soc., 211M474, 1NW(2d)593. See Dun. Dig. 4871c.

4b. Notice of claim.

For permanent disability clauses in life policies, see §3399, note 3.

A letter from insurer to administratrix of insured in life policy with respect to total disability of insured prior to death held not a waiver of notice required by this section. Lindskog v. E., 209M13, 295NW70. See Dun. Dig. 4874c.

The presumption in aid of proof is no doubt rebuttable, but under policy insuring against apparent as well as actual permanent disability, it may well be employed to prove apparent permanency of disability, even where insured is not disabled at time of trial. Wheeler v. Equitable Life Assur. Soc., 211M474, 1NW(2d)593. See Dun. Dig. 4871c.

Where notice of disability was not given until 38 days after total disability ceased, insured in a life policy issued in 1925 could recover under health and accident code as if he had furnished notice in accordance therewith if it was not reasonably possible to furnish notice earlier and notice was furnished as soon as was reasonably possible. Id. See Dun. Dig. 4874c.

Word "claim" in statute is broad enough to include an assertion of a right to disability benefits and is not synonymous with "cause of action". Id. See Dun. Dig. 4874c.

Whether insured, who became demoralized and disabled on discovering presence of cataracts in his eyes and did not serve notice of disability until a year later and after two operations and recovery, furnished notice as soon as reasonably possible, held for jury. Id. See Dun. Dig. 4874c.

Disability clauses in life policies affected by Laws 1935, c. 74, Mason St. 1940 Supp., §3426(2). Id. See Dun. Dig. 4871c.

6. Evidence.

When beneficiary in accident policy must show death as result of bodily injury effected solely through external, violent and accidental means, he has the burden of excluding suicide, though ordinarily in life insurance cases, where suicide operates as exception from or avoidance of the policy, burden to show suicide is upon insurer. Ryan v. M., 206M562, 289NW557. See Dun. Dig. 4874b.

Presumption against suicide does not shift burden of proof. It is but a rule of law dictating decision on unopposed facts and shifting burden of going forward with evidence. Id. See Dun. Dig. 4874b.

In action on policies of accident insurance, burden is upon plaintiff to show that disease was not a contributing cause of death. Id. See Dun. Dig. 4873.

Statutory presumption of permanent disability. Wheeler v. Equitable Life Assur. Soc., 211M474, 1NW(2d)593; note 4b. See Dun. Dig. 4871c.

7. Questions for jury.

If evidence is equivocal and open to interference that death was due in part to disease and not caused exclusively by accident, verdicts for insurers will not be disturbed. Ryan v. M., 206M562, 289NW557. See Dun. Dig. 4873.

Question whether notice was given as soon as was reasonably possible of apparent permanent disability is ordinarily one of fact for jury unless circumstances disclose nothing by way of extenuation or excuse. Wheeler v. Equitable Life Assur. Soc., 211M474, 1NW(2d)593. See Dun. Dig. 4874c.

7½. Instructions.

Presumption against suicide is not evidence in action on accident policy, and so plaintiff was not entitled to an instruction that "there is in law a presumption against suicide". Ryan v. M., 206M562, 289NW557. See Dun. Dig. 4875.

9. Proof of loss.

This section does not conflict with terms of an accident and health insurance policy contained within a life insurance policy which makes obligation to pay disability insurance dependent upon receipt of proof of insured's total and permanent disability as construed in Floyd M. Andrews Inc. v. Aetna Life Ins. Co., 198M1, 268NW415, 106ALR1085; Barron v. Equitable Life Assur. Soc., 197 M367, 266NW845; and Berke v. New York Life Ins. Co., 208M210, 293NW248. Lindskog v. E., 209M13, 295NW70. See Dun. Dig. 4874c.

3426. Not to affect workmen's compensation insurance, etc.

(2).

This sub-section has apparently made §§3415 to 3427 inapplicable to policies of life insurance providing for total disability benefits. Lindskog v. E., 209M13, 295NW 70. See Dun. Dig. 4875.

CO-OPERATIVE LIFE AND CASUALTY COMPANIES

3430. Reserve fund—Reciprocal provisions.

Commissioner may require that bonds be registered in his name and that mortgages and other securities be assigned to him in order that he may immediately resort to them in event that becomes necessary. Op. Atty. Gen. (250), Apr. 16, 1941.

Commissioner of insurance holds securities deposited with him by insurance companies as a statutory trustee, and may require them to be registered in his name. Op. Atty. Gen. (250), June 24, 1942.

DOMESTIC INSURANCE COMPANIES WITHOUT CAPITAL STOCK

3443-3. Removal of corporate existence.

Laws 1943, c. 17, provides that any domestic insurance corporation having no capital stock, organized under the laws of this state, whose period of duration has expired less than two years prior to February 5, 1943, if such corporation has continued to transact business, may on or before February 4, 1944, renew its corporate existence for any period permitted by the laws of this state, by the adoption of a resolution to that effect by the affirmative vote of a majority of the members present in person or by proxy at a regular or special meeting called for that expressly stated purpose, and by causing such resolution to be embraced in a certificate duly executed by its president and its secretary, or other presiding and recording officers, under its corporate seal, and approved, filed, and recorded and published in the manner proscribed by law for the execution, approval, filing, recording and publishing of an original certificate of incorporation or articles of association.

MUTUAL BENEFIT ASSOCIATIONS

3444. Mutual benefit associations; employers who make deductions from wages or employees' funds must secure license.—No employer shall make deductions from the wages of his employees for the purpose of furnishing them with medical or hospital care, accident, sickness or old age insurance or benefits, unless he first receives from the commissioner of insurance a license for the benefit plan he operates or proposes to operate. Such license shall be granted only

when the commissioner is satisfied that the benefits given are commensurate with the charges made and that the charges will keep the fund solvent. All such licenses shall be for the period of one year. The commissioner may require a statement of the operation of the fund, on a form to be prescribed by him, before granting a renewal. The fee for any such license is $1.00 and for filing the annual statement $1.00. Before granting a license the commissioner of insurance shall submit the proposed plan to the chairman of the industrial commission in order that he may determine whether the benefits are in conjunction with benefits under the workmen's compensation act.

This section shall not apply to deductions made from employees' wages for group insurance issued by insurers authorized to transact business in this state. (As amended Feb. 18, 1943, c. 43, §1.)

ASSESSMENT BENEFIT ASSOCIATIONS

3445-14. Funds to be kept in two accounts.

There is no provision exempting property from money and credits tax, but general provisions with respect to taxable money and credits are applicable. Op. Atty. Gen. (614H), Jan. 22, 1942.

FRATENAL BENEFICIARY ASSOCIATIONS

3451. Benefits—Reserves.

So much of §§3462 and 3464 as are inconsistent with the second and third paragraphs of §3451 have been repealed by implication. Op. Atty. Gen. (249b-6), May 26, 1941.

3462. Reserve fund.

Barbers' union by long-continued practice of permitting members to pay dues at irregular intervals waived provisions of its constitution that acceptance of dues after date for payment would not constitute a waiver in so far as sick and death benefits were concerned. Wait v. Journeymen Barbers' International Union, 210M180, 297 NW630. See Dun. Dig. 4839, 4842.

So much of §§3462 and 3464 as are inconsistent with the second and third paragraphs of §3451 have been repealed by implication. Op. Atty. Gen. (249b-6), May 26, 1941.

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, or zanized 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 66 2/3 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. (As amended Apr. 2, 1943, c. 271, §1.)

3464. Expenses.

So much of §§3462 and 3464 as are inconsistent with the second and third paragraphs of §3451 have been repealed by implication. Op. Atty. Gen. (249b-6), May 26, 1941.

3466. Methods of forming associations, etc.

Laws 1943, c. 289, provides that fraternal benefit associations or corporations organized under the Laws of 1907, may renew their corporate existence if proceedings are taken before one year after the passage of this act.

3478. Constitution and laws.

Rules that forfeitures are not favored in the law and that court will be vigilant to discover and give effect to any act or circumstance from which it may fairly be argued that an insurer has waived right to strict and literal performance by assured or upon which an estoppel against such a defence may be founded will be applied in construing contracts and constitutions of fraternal or labor organizations paying sick and death benefits to members. Wait v. Journeymen Barbers' International Union, 210M180, 297NW630. See Dun. Dig. 4841.

Barbers' union by long-continued practice of permitting members to pay dues at irregular intervals waived provisions of its constitution that acceptance of dues after date for payment would not constitute a waiver in so far as sick and death benefits were concerned. Id. See Dun. Dig. 4839, 4842.

Where applicant for insurance gave truthful answers to questions concerning his state of health which without his knowledge were falsified by soliciting agent upon application, insurer is estopped from proving that statements were those of applicant, and this applies to an insurer in a mutual benefit society. Oredson v. Woodmen of the World Life Ins. Soc., 211M442, 1NW(2d)413. See Dun. Dig. 4669.

3484. Expenses of examinations.

Examination revolving fund. Laws 1943, c. 409.

FIRE INSURANCE COMPANIES

3512. Standard fire policy.—No fire company shall issue on property in this state any policy other than the standard form herein set forth, the blanks for which may be filled in print or in writing, and no condition, stipulation or term, other than those therein provided for, whether as to jurisdiction, limitation, magistrate, certificate or otherwise, shall be valid if inserted in any such policy, except as follows:

1. It may print on or in its policy its name, location and date of incorporation, the amount of its paid-up capital, the names of its officers and agents, the number and date of the policy, and, if it is issued through an agent, the words, "This policy shall not be valid until countersigned by the duly authorized agent of the company at....."

2. It may print or use in its policy printed forms of description and specification of the property insured, including permits for the use of electricity, gasoline, acetylene or storage of other extra hazardous product or material, for repairs and improvements, for the operation or ceasing to operate, for the maintenance of sprinkling or other improvements, and for the use of the premises for ordinary work and materials incident to the business.

Any permit for the use or storage of a hazardous product may contain a caution giving instructions as to the proper method of use or storage.

It may print or use in its policy printed forms for insurance against loss of rents and rental values, leaseholds, values, use and occupancy, and indirect or consequential loss or damage caused by change of temperature resulting from the destruction of refrigerating or cooling apparatus, or any of its connections. It may also use a form specifically excluding the last mentioned hazard.

All contracts of insurance against loss of rents and rental values, leasehold values, use and occupancy, shall contain the following provision:

The period of indemnity under this contract shall be limited to such length of time (commencing with the date of the fire and not limited by the date of the expiration of the policy) as would be required through the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property described in said policy as may be destroyed or damaged.

When the policy covers a lumber risk upon the request of the insured in writing, of which fact such

writing shall be the only evidence, and if in consideration thereof, a reduction in the rate of premium is made by the company, the form known as the "clear space lumber clause" may be used, said form to be in the following terms, to-wit:

The rate of premium upon the within policy has been reduced from the sum of $..... to the sum of $..... and in consideration of such reduction the assured agrees that a continuous space of .....feet shall hereafter at all times be maintained between the property hereby insured and any wood-working or manufacturing establishment; said space shall, in all cases, exclude and be measured from the exterior boundary of any permanent structure or addition connected with or attached to (here insert description of nearest woodworker); said space not to be occupied by any independent or disconnected building or structure (here first exceptions if any) or by accumulation of combustible material of any kind and except the loading or unloading only within or transportation of lumber or timber products across such clear space. It shall not be used for handling, piling or sorting lumber for temporary purposes or otherwise. This clause shall not be construed to prohibit the maintenance of operation within said clear space of tramways used exclusively for the transportation of lumber; provided, that lumber is neither piled or stored thereon. Sorting platforms shall not be held tramways within the meaning of this clause, and failure upon the part of the insured to comply with the terms of this clause shall not avoid this policy, nor in any manner lessen the liability of the company hereunder, but in the case of such failure, the assured shall be liable to the company for the difference in the premium hereinbefore set forth.

It may also print or use in its policy in case the assured desires a permit containing what is known as the "watchman clause", said clause to be in the following words, to-wit:

The insured agrees that during the continuance of this policy he will uniformly and constantly maintain a watch service in connection with said premises, and in consideration of such uniform and constant watch service the rate of premium charged upon the policy has been reduced to $..... to $....., and it is hereby expressly agreed and understood that the failure of the assured to maintain such uniform and constant watch service or comply with this clause or agreement, shall in no manner nor to any extent avoid this policy, or in case of loss lessen the liability of the company under this policy; but in the event of the failure of the assured to maintain such watch service or perform his part of this agreement, he shall then be liable, and hereby agrees to pay said full premium for the unexpired term of said policy.

It may also print or use in its policy a printed form providing that in case of a risk equipped with automatic sprinklers, the assured shall use due diligence in seeing that the equipment is properly maintained; also a permit that the premises may remain vacant or unoccupied for a stipulated number of days beyond the thirty (30) days provided in the policy, for which permit an additional premium may be charged; also a form whereby the assured agrees that, for a reduction in the rate of premium, barrels and buckets of water shall be kept at hand at all times; that failing so to do, the assured shall be liable for the highest rate written in the policy; also a form may be attached excluding liability for loss or damage to dynamos and other electrical appliances caused by electric current, either natural or artificial.

It may also print or use in its policy printed forms providing that in the case of loss, such loss shall be payable to the mortgagee, as his, her, its or their interest may appear, a printed form in the following words, to-wit:

Subject to the stipulations, provisions and conditions contained in this policy, the loss, if any, is payable to.....mortgagee, as his, her, its or their interest may appear.

It may also print or use its policy in case the assured desires liability to attach to several buildings, divisions or locations under one item, a printed form in the following words, to-wit:

It is hereby agreed in case of loss, this policy shall attach in or on each building, division or location in such proportion as the value in or on such building, division or location bears to the aggregate value of the subject insured.

It may also print or use in its policy the following clause, to-wit:

The insured has relinquished all rights to recover for loss or damage by fire from..... (here insert name of individual, partnership, association or corporation.)

3. If insuring against damage by lightning, it may print in the clause enumerating the perils insured against the additional words, "also any damage by lightning, whether fire ensues or not," and in the clause providing for apportionment or loss in case of other insurance, the words, "whether by fire, lightning or both".

4. If incorporated or formed in the state, it may print in its policy any provision which it is authorized or required by law to insert therein; if not incorporated in this state, it may, with the approval of the commissioner, so print any provision required by its charter or deed of settlement, or by the laws of its own state or country, not contrary to the laws of this state.

5. It may print upon a policy issued in compliance herewith the words "Minnesota Standard Policy".

6. No provision shall be attached to or included in such policy limiting the amount to be paid in case of total loss on buildings to less than the amount of insurance on the same.

7. When two or more authorized companies unite in the issue of a joint policy, the heading thereof may show the severalty of the contract, and also the proportion of premium to be paid to each, and the proportion of liability which each assumes.

In the printed conditions of such standard policy the necessary changes may be made from the singular to the plural number when reference is had to the companies issuing such policy. It shall be plainly printed, no portion thereof in smaller than long primer type, and shall be as follows, to-wit:

No. ..... $.....

(Corporate name of the company or association, its principal place or places of business.)

In consideration of.....dollars, to be paid by the insured hereinafter named, the receipt whereof is hereby acknowledged, does insure..... and.....legal representatives, against loss or damage by fire, to the amount of.....dollars.

(Description of property insured.)

Bills of exchange, notes, accounts, evidences and securities of property of every kind, books, wearing apparel, plate, money, jewels, metals, patterns, models, scientific cabinets and collections, paintings, sculpture and curiosities are not included in said insured property unless specially mentioned.

Said property is insured for the term..... beginning on the.....day of ..... in the year nineteen hundred and..... at noon, and continuing until the.....day of .....in the year nineteen hundred and .....at noon, against all loss or damage by fire originating from any cause except invasion, civil commotion, riots, or any military or usurped power whatever; the amount of said loss or damage to be estimated according to the actual value of the insured property at the time when such loss or damage happens, except in case of total loss on buildings; but not to include loss or damage caused by explosion of any kind, unless fire ensues, and then to include that caused by fire only.

The policy shall be void if any material fact of circumstance stated in writing has not been fairly represented by the insured, or if the assured now has or shall hereafter make any other insurance on the said property without the assent of the company, or if without such assent the property shall be removed, except that, if such removal shall be necessary for the preservation of the property from fire, this policy shall be valid without such assent for five days thereafter, or if without such assent the situation or circumstances affecting the risk shall, by or with the knowledge, advice, agency or consent of insured, be so altered as to cause an increase of such risks, or if, without such assent, the property shall be sold or this policy assigned, or if the premises hereby insured shall become vacant by the removal of the owner or occupant, and so remain vacant for more than thirty days without such assent, or if it be a manufacturing establishment running in whole or in part extra time, except such establishment may run in whole or in part extra hours, not later than 9:00 o'clock P. M., or if such establishment shall cease operations for more than thirty days without permission in writing indorsed hereon, or if the assured shall make any attempt to defraud the company, either before or after the loss, or if gun-powder or other articles subject to legal restrictions shall be kept in quantities or manner different from those allowed or prescribed by law, or if camphene, benzine, naphtha or other chemical oils or burning fluids shall be kept or used by the insured on the premises insured, except that what is known as refined petroleum, kerosene, or coal oil may be used for lighting, and in dwelling houses kerosene oil stoves may be used for domestic purposes, to be filled when cold, by day-light, and with oil of lawful fire test only.

If the insured property shall be exposed to loss or damage by fire, the insured shall make all reasonable exertions to save and protect same.

In case of any loss or damage under this policy, a statement in writing, signed and sworn to by the insured, shall be forthwith rendered to the company, setting forth the value of the property insured, except in case of total loss on buildings the value of said buildings need not be stated, the interest of the insured therein, all other insurance thereon, in detail, the purpose for which and the persons by whom the building insured, or containing the property insured, was used, and the time at which and manner in which the fire originated, so far as known to the insured.

The company may also examine the books of account and vouchers of the insured, and make extracts from the same.

In case of any loss or damage, the company, within sixty days after the insured shall have submitted a statement as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount, if not agreed upon, shall be ascertained by award of referees, as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises or any portion thereof separately insured by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition.

It is moreover understood that there can be no abandonment of the property insured to the company, and that the owners shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as above provided.

If there shall be any other insurance on the property insured, whether prior or subsequent, the insured shall recover on this policy no greater proportion of loss, except in case of total loss on buildings, sustained than the sum hereby insured bears to the whole amount insured thereon.

And whenever the company shall pay any loss, the insured shall assign to it, to the extent of the amount so paid, all rights to recover satisfaction for the loss or damage from any person, town or other corporation, excepting other insurers, or the insured, if requested, shall prosecute therefor at the charge and for the account of the company.

If this policy shall be made payable to a mortgagee of the insured real estate, no act or default of any person other than such mortgagee, or his agents, or those claiming under him, shall affect such mortgagee's right to recover in case of loss on such real estate.

Provided, that the mortgagee shall, on demand, pay according to the established scale of rates for any increase of risks not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy, for which no liability exists as to the mortgagor or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the said mortgage, together with the note and debts thereby secured.

This policy may be cancelled at any time at the request of the insured, who shall thereupon be entitled to a return of the portion of the above premium remaining, after deducting the customary monthly short rates for the time this policy shall have been in force.

The compnay also reserves the right, after giving written notice to the insured, and to any mortgagee to whom this policy is made payable, and tendering to the insured a ratable proportion of the premium, to cancel this policy as to all risks subsequent to the expiration of ten days from such notice, and no mortgagee shall then have the right to recover as to such risks.

In case of loss, except in case of total loss on buildings, under this policy and a failure of the parties to agree as to the amount of the loss, it is mutually agreed that the amount of such loss shall, as above provided, be ascertained by two competent, disinterested and impartial appraisers who shall be residents of this state, the insured and this company each selecting one within fifteen days after a statement of such loss has been rendered to the company, as herein provided, and in case either party fail to select an appraiser within such time, the other appraiser and the umpire selected, as herein provided may act as a board of appraisers, and whatever award they shall find shall be as binding as though the two appraisers had been chosen; and the two so chosen shall first select a competent, disinterested and impartial umpire; provided, that if after five days two appraisers cannot agree on such an umpire, the presiding judge of the district court of the county wherein the loss occurs may appoint such an umpire upon application of either party in writing by giving five days' notice thereof in writing to the other party. Unless within fifteen days after a statement of such loss has been rendered to the company, either party, the assured or the company, shall have notified the other in writing that such party demands an appraisal, such right to an appraisal shall be waived; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of the loss; the parties thereto shall pay the appraisers respectively selected by them and shall bear equally the expenses for the appraisal and umpire. The fees of any appraiser or umpire shall in no case exceed ten dollars ($10.00) per day.

No suit or action against the company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this state, unless commenced within two years from the time the loss occurred.

In witness whereof, the said..... Company has caused this policy to be signed by its president and attested by its secretary (or by such proper officers as may be designated), at its office in ..... Date .....

(As amended Act Feb. 27, 1943, c. 86, §1.)

1. In general.

Glidden Co. v. Retail Hardware Mut. Fire Ins. Co., 181 M518, 233NW310, 77ALR616. Aff'd 284US151, 52SCR69, 76 LEd214.

1½. Insurable interest.

Legality of a fire insurance policy erroneously naming husband rather than wife as insured should be tested by actual, not expressed, agreement when evidence justifies reformation and husband had no insurable interest. Pellicano v. Hartford Fire Ins. Co., 211M314, 1NW(2d)354. See Dun. Dig. 4775.

2. Notice and proof of loss.

Verdict for $1,000 for household goods destroyed in fire held not excessive. Rommel v. New Brunswick Fire Ins. Co., 214M251, 8NW(2d)28. See Dun. Dig. 4781a.

4. Limitation of actions.

A limitation of one year after loss, fixed by a policy of automobile fire insurance for commencing actions thereunder, is valid. Gendreau v. S., 206M237, 288NW225. See Dun. Dig. 4732.

6. Other insurance.

Fire insurance is not concurrent unless policies are on same property or some part thereof, on same interest, against same risks, and in favor of same party. Nobbe v. Equity Fire Ins. Co., 210M93, 297NW349. See Dun. Dig. 4760a.

Mennonite Aid Plan is "other insurance". Op. Atty. Gen. (249j), Dec. 7, 1943.

7. Mortgage clause.

Where holder of mechanic's lien procured insurance in his own interest and at his own expense and there was a loss which insurer paid to lienholder, insurer held properly subrogated to lien and entitled to enforce it accordingly against proceeds of other insurance procured by fee owner, original holder of lien having been entitled under policy to share therein. Nobbe v. Equity Fire Ins. Co., 210M93, 297NW349. See Dun. Dig. 4760a.

Right of subrogation exists under a fire policy, originally in favor of both mortgagor and mortgagee but which, although remaining good as to latter, has been avoided as to former. Id. See Dun. Dig. 6275.

Standard union mortgage clause does not protect a vendor under a contract for deed from the consequences of acts of the vendee who is the insured under a fire insurance policy, and vendor's rights are subject to insurer's defenses against vendee. Langhorne v. Capital Fire Ins. Co., (DC-Minn), 44 F. Supp. 739. See Dun. Dig. 4777, 4777a, 6275.

7½. Fraud.

Provision in standard policy which declares void any policy on which insured shall attempt to defraud insurer either before or after a fire, is not invalid for constitutional reasons considering public interest affected and gravity of offense. Supornick v. N., 209M500, 296NW904. See Dun. Dig. 4792a.

Evidence held to support finding that insured, both in statement of loss and damage and in testimony before appraisers, attempted to defraud insurer by intentional misrepresentation of loss. Id.

In action to reform a fire policy by changing name of insured from husband to wife, evidence did not compel a finding that wife ratified husband's alleged fraudlent conduct. Pellicano v. Hartford Fire Ins. Co., 211M314, 1NW (2d)354. See Dun. Dig. 4778.

10. Arbitration.

Glidden Co. v. Retail Hardware Mut. Fire Ins. Co., 181 M518, 233NW310, 77ALR616. Aff'd 284US151, 52SCR69, 76 LEd214.

If arbitration fails through fault of the insurer, it waives compliance with arbitration clause by the insured, and if arbitration fails through fault of the insured, absence of an award bars an action on policy by him. Kavli v. E., 206M360, 288NW723. See Dun. Dig. 4793.

Purpose of arbitration under a fire policy is to provide a plain, speedy, inexpensive and just determination of extent of the loss. Id. See Dun. Dig. 4793.

Appraisers may appoint an umpire before they have qualified. Id. See Dun. Dig. 4794.

Absent a policy provision allowing appraisers a certain time within which to name an umpire, it is the duty of a party to choose an appraiser who will act with reasonable promptness with the other appraisers in naming an umpire. Id. See Dun. Dig 4799.

Fire insurer repudiating policy naming husband instead of wife as insured lost right to arbitration. Pellicano v. Hartford Fire Ins. Co., 211M314, 1NW(2d)354. See Dun. Dig. 4793.

10½. Appraisal.

Standard form fire insurance policy requires the appraisers to name umpire within five days and authorizes the judge of district court to make appointment if appraisers cannot do so within time stated, regardless of whether inability is due to failure to agree after attempting to do so or to failure to attempt to agree at all. Kavli v. E., 206M360, 288NW723. See Dun. Dig. 4794.

While an appraiser or referee is not representative or agent of party appointing him so as to be subject to his control while performing his duties as appraiser, and it would be highly improper for appraiser to submit to control or influence of such party, party appointing an appraiser is responsible when appraiser whom he selected arbitrarily and unfairly refuses to act with other appraisers. Id. See Dun. Dig. 4799.

10⅞. Reformation of policy.

Fire insurance policy was reformed for mistake of agent as to property covered. Dose v. I., 206M114, 287NW 866. See Dun. Dig. 4652a.

Evidence sustains finding of mutual mistake in writing fire policy with husband as insured instead of wife, the legal owner. Pellicano v. Hartford Fire Ins. Co., 211 M314, 1NW(2d)354. See Dun. Dig. 4652a.

13. Estoppel and waiver.

Risk of loss from fire having attached to policy, insurer, as a price of asserting its defense of attempted fraud by insured, was not required to return premium. Supornick v. N., 209M500, 296NW904. See Dun. Dig. 4683.

Where question of waiver by insurer of its defense of attempted fraud was not presented to lower court and did not appear in specifications of error in motion for new trial, that question will not be considered on appeal. Id. See Dun. Dig. 4789.

14. Subrogation.

Right of an insurer to subrogation does not depend on contract but on operation of general principles of equity and nature of contract of insurance. Bacich v. Homeland Ins. Co., 212M375, 3NW(2d)665. See Dun. Dig. 4805.

In an action to recover damages for breach of an implied warranty of fitness for the purpose, insurance coverage of plaintiff, under which he has been partially paid for his loss, will not relieve the defendant of liability for his wrong. Donohue v. Acme Heating Sheet Metal & Roofing Co., 214M424, 8NW(2d)618. See Dun. Dig. 4805a.

15. Discharge of liability.

An insured, who recovered his fire loss from a wrongdoer by a suit by means of which he recovered his damages by cancellation of a mortgage debt to wrongdoer, cannot recover such loss from his insurer, which was thereby deprived of subrogation against wrongdoer. Bacich v. Homeland Ins. Co., 212M375, 3NW(2d)665. See Dun. Dig. 4805.

3513. Automobile fire insurance policies.

An automobile trailer was a "motor vehicle" under statute. Gendreau v. S., 206M237, 288NW225. See Dun. Dig. 4759.

3516. Whole amount collectible—Co-insurance, etc.

Statute embraces oral as well as written applications. Dose v. I., 206M114, 287NW866. See Dun. Dig. 4704.

One, otherwise a mere broker, who procures application for fire insurance and issue of a policy thereon becomes so far insurer's agent that his mistake of fact as to property to be covered, is chargeable to insurer. Id. See Dun. Dig. 4717.

3518. Payment to mortgagee.

Where holder of mechanic's lien procured insurance in his own interest and at his own expense and there was a loss which insurer paid to lienholder, insurer held properly subrogated to lien and entitled to enforce it accordingly against proceeds of other insurance procured by fee owner, original holder of lien having been entitled under policy to share therein. Nobbe v. Equity Fire Ins. Co., 210M93, 297NW349. See Dun. Dig. 4805.

Right of subrogation exists under a fire policy, originally in favor of both mortgagor and mortgagee but which, although remaining good as to latter, has been avoided as to former. Id.

3528. Investment of special reserve fund.

Commissioner may require that bonds be registered in his name and that mortgages and other securities be assigned to him in order that he may immediately resort to them in event that becomes necessary. Op. Atty. Gen. (250), Apr. 16, 1941.

Commissioner of insurance holds securities deposited with him by insurance companies as a statutory trustee, and may require them to be registered in his name. Op. Atty. Gen. (250), June 24, 1942.

MUTUAL FIRE COMPANIES AND LLOYDS

3533. Lloyds—Authority to do business.

Association is a "corporation" for purpose of state income tax. Hauschild, MBTA (No. 49), May 13, 1941.

MISCELLANEOUS PROVISIONS REGARDING VARIOUS KINDS OF MUTUAL COMPANIES

3545. Non-assessable policies may be written—Etc.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

3547. Prerequisites of mutual companies transacting business other than life, fire, accident, etc.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

3553. Fire, hail and tornado associations, etc.

Mennonite Aid Plan is "other insurance". Op. Atty. Gen. (249j), Dec. 7, 1943.

RECIPROCAL OR INTER-INSURANCE EXCHANGES

3587. Reciprocal or interinsurance contracts.

Neither a county nor a school district may become a member of a reciprocal or interinsurance exchange. Op. Atty. Gen. (249b-16), Mar. 28, 1941.

County may not purchase and pay for a public official fidelity bond issued by reciprocal company organized under either laws of Iowa or of Minnesota. Op. Atty. Gen. (249a-4), May 11, 1942.

3593. Annual report.

Examination revolving fund. Laws 1943, c. 409.

INSURANCE ON STATE BUILDINGS AND PROPERTY

3599. State property—Rural Credits Bureau may insure buildings.

The credit, 1921, c. 288, §4B, should be stricken from this section in 1940 Supp.

State may not carry fire insurance on supplies stored in store room in state capital. Op. Atty. Gen., (980a-8), Oct. 13, 1939.

Fire insurance to cover equipment in a nursery school connected with a teachers college cannot be purchased with public funds. Op. Atty. Gen. (159B-4), Aug. 11, 1941.

FIRE INSURANCE RATING BUREAUS AND RATE REGULATIONS

3605. Discriminatory rates forbidden; etc.

Validity of Home Owners Loan Corporation contract with a Stock Company Association. Op. Atty. Gen. (249A-7), Mar. 19, 1942.

Fire insurance company discriminate when carrying or reinstating policy for full amount during its original term after payment of fire loss without charging additional premium. Op. Atty. Gen. (252j), June 16, 1943.

COMPENSATION INSURANCE BUREAU

3618. Duties—Rates of insurance.

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of $300. Op. Atty. Gen. (517K), Oct. 2, 1940.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. Op. Atty. Gen., (517K), Oct. 2, 1940.

Board could approve a comprehensive rating plan for national defense projects, involving a form of "retrospective rating" under which Federal Government assumes to pay premiums commensurate with actual losses incurred, subject to a maximum premium of something slightly more than 90% of standard premium, actual premium to be determined after losses have been computed. Op. Atty. Gen. (517k), July 24, 1941.

It would not be legal for stock companies and non-stock companies licensed to do business in the state to allow advance discount unless the plan is approved by the board. Op. Atty. Gen. (517k), Dec. 3, 1943.

3630. Insurers shall not discriminate.

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

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of $300. Op. Atty. Gen. (517K), Oct. 2, 1940.

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Proposed plan of war department for a comprehensive rating plan for national defense projects let on a "cost-plus-a-fixed fee" basis to enable federal government to pay lower premium charges than otherwise upon project, may be legally approved. Op. Atty. Gen. (249B-21), Aug. 6, 1941.

Insurers do not discriminate if they charge the rates and use the plans approved by the board. Op. Atty. Gen. (517k), Dec. 3, 1943.

3631. Rates shall be filed.

Op. Atty. Gen., (517J), Feb. 7, 1940; note under §3630. Opinion of Oct. 21, 1930, is overruled. Op. Atty. Gen., (517K), Oct. 25, 1940.

3632. Rates to be uniform—Exceptions.

Op. Atty. Gen., (517J), Feb. 7, 1940; note under §3630. Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of $300. Op. Atty. Gen. (517K), Oct. 2, 1940.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. Op. Atty. Gen., (517K), Oct. 2, 1940.

3634-1. Insurors required to take certain risks—Refusal to write—Statement.

Fact that employer was classed as "an undesirable risk" by carriers writing workmen's compensation insurance was a matter of public record in office of Industrial Commission and one of which commission could take judicial notice in workmen's compensation proceeding. Corcoran v. Teamsters and Chauffeurs Joint Council No. 32, 209M289, 297NW4. See Dun. Dig. 3347.

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

3634-2. Bureau to fix premium rates.

Policies permitting insured to participate in profits are valid, but a plan providing for a dividend based upon a fixed percentage of premium would be invalid, overruling opinions of May 1, 1934, Dec. 10, 1938, and affirming opinions of Feb. 16, 1924, Feb. 18, 1924, June 1, 1939. Op. Atty. Gen., (517K), Oct. 2, 1940.

3634-6. Liability of insurers.

Endorsements on workmen's compensation insurance policies providing for policyholder participation in profits are valid if they are payable solely from profits, and are not invalid in limiting participation to policyholders paying premiums in excess of $300. Op. Atty. Gen. (517K), Oct. 2, 1940.

TOWNSHIP MUTUAL COMPANIES ORGANIZATION

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 are hereby authorized to insure against loss or damage by hail, windstorm, tornado, cyclone, and inherent explosion, for their members, corn and other grain while stored in sealed containers in accordance with the regulations of the federal government. (As amended Apr. 9, 1941, c. 131, §1.)

3659. What may be insured.—Subdivision 1. 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 barns 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 city, village or borough of 1,250 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 policyholders it shall be duly decided by them, by a majority vote, to do so.

Subdivision 2. 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 persons 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 or 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.

Subdivision 3. 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. (As amended Apr. 9, 1941, c. 155, §1.)

Town mutual fire insurance companies have same authority to insure property within limits of cities and villages of over 1000 population as they have to insure property within limits of town of their incorporation, provided property is located on land actually used for farming or gardening purposes. Op. Atty. Gen., (487c-3), Mar. 4, 1941.

Where policy of insurance on property in a village is issued when the village has a population less than 1000 it should be kept in force until expiration date, notwithstanding that population has increased beyond 1000. Op. Atty. Gen., (487c-3), Mar. 5, 1941.

Population of a village is to be determined from records of last preceding census, state or federal, notwithstanding that a new business has been set up and there is actually a large increase in population. Id.

TITLE INSURANCE COMPANIES

3703. Real estate title insurance companies.

Commissioner may require that bonds be registered in his name and that mortgages and other securities be assigned to him in order that he may immediately resort to them in event that becomes necessary. Op. Atty. Gen. (250), Apr. 16, 1941.

Commissioner of insurance holds securities deposited with him by insurance companies as a statutory trustee, and may require them to be registered in his name. Op. Atty. Gen. (250), June 24, 1942.

FIDELITY AND SURETY COMPANIES

3710. Fidelity and surety companies.

Suretyship in general, see notes under c. 49A, notes 32 to 35.

Where part of a judgment attributable to a claim is a mere matter of mathematical calculation, it is permissible for parties to judgment to allocate to such a claim by such a calculation part of money paid in settlement of a judgment including another claim, as affecting liability of fidelity insurer. State Bank v. A., 206M137, 288NW7. See Dun. Dig. 4875q.

Provision in fidelity policy requiring notice of discovery of loss within a stipulated period are limitations on liability coverage. Id.

Where there is doubt as to meaning of a fidelity policy it is construed in favor of insured. Id.

Where notice of loss is given and proof of claim is filed under a fidelity policy, before payment of judgment in money, and insurer denies liability under policy, such disclaimer is a waiver of further notice of loss and filing of another claim after payment of judgment, though under policy loss does not occur until payment of judgment. Id.

Fidelity insurance covers all losses due to acts of employe committed during coverage term, whether discovered during that time or afterwards. Id.

Where loss does not accrue until payment in money of a claim against indemnitee based on a claim against indemnitee based on a defalcation covered by policy, time for giving notice of loss and filing proof of claim within a stipulated time after discovery of loss runs from time of payment of claim. Id. See Dun. Dig. 9107b.

Surety on fidelity bond of manager of elevator was liable for gross profit made by manager in purchase of grain from his principal and trucking it to other places for sale, though employer did not engage in trucking grain to sell and there was no competition. Raymond Farmers Elevator Co. v. A., 207M117, 290NW231. See Dun. Dig. 4875q.

If liability of principal in fidelity bond is established, whether before court or jury, or in same or separate actions, only question in determining surety's liability is whether acts for which principal is liable are within provisions of bond. Id. See Dun. Dig. 4875q.

A suit against a surety on contract of fidelity is an action for recovery based upon promise to pay and is triable by a jury ordinarily, but this may be qualified by nature of surety contract. Id. See Dun. Dig. 4875q.

By contract surety on fidelity bond and employer can determine upon whom burden of proof shall rest, but as between employer and employee the burden of proof is one imposed by law, and suretyship contract does not operate on it. Id. See Dun. Dig. 4875q.

In action by elevator company against manager for an accounting and a money judgment, in which surety on fidelity bond was named as a defendant, manager was not entitled to a jury trial, and surety could not complain that trial court withdrew case from jury and tried it as a court case, acts committed by manager during his employment coming within provisions of surety bond. Id. See Dun. Dig. 4875q.

A mutual company may issue and department of administration may purchase a non-assessable fidelity bond which satisfies requirements of statutes and is licensed by commissioner of insurance and has a sufficient guaranty fund. Op. Atty. Gen., (980a-4), Jan. 31, 1940.

State may purchase surety bonds from mutual companies if they are non-assessable and otherwise comply with statute, and probable dividend may be taken into consideration in determining lowest bid. Op. Atty. Gen., (707a-13), Jan. 31, 1940.

PROVISIONS REGARDING FOREIGN COMPANIES

3721. Retaliatory provisions.

"Convention plan" of examination of insurance companies as adopted by National Association of Insurance Commissioners, and method of handling compensation of representatives given leave of absence, discussed. Op. Atty. Gen., (250), Nov. 27, 1939.

Taxes of this state should be set off against taxes of sister states, licenses should be set off against licenses, and fees against fees, and there is no requirement that they be combined. Op. Atty. Gen. (254d), Apr. 12, 1941.

Primary purpose of law is to protect Minnesota companies doing business in other states from unreasonable taxes, fees or licenses which might be imposed by such foreign states. Op. Atty. Gen. (254d), Oct. 15, 1942.

This is a retaliatory and not a reciprocal law. Id.

Taxes, fees, licenses, etc., should be offset item by item rather than by the aggregate method. Id.

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

3723. Clerk to file certificate.—On or before September 30, annually, the clerk of every city, village, borough, town, or township 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 city, village, borough, town, or township served by such fire department under contract. (As amended Feb. 25, 1943, c. 75, §1.)

One belonging to Brainerd Fire Department Relief Association which provides no retirement benefits or pensions whatever is eligible for membership in Public Employees Retirement Association. Op. Atty. Gen. (331b-1), Oct. 22, 1942, Dec. 12, 1942.

Section applies to municipalities, including those having firemen's relief associations which are governed by special statutes. Op. Atty. Gen. (688c), June 23, 1943.

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 cities, villages, boroughs, towns, and townships, 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 cities, villages, boroughs, towns, and townships, 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 a report setting forth the names of all cities, villages, boroughs, towns, and townships furnishing fire protection to other cities, villages, boroughs, towns, and townships and to what other city, village, borough, town, or township the services are furnished as evidenced by the service contracts filed with him. The report shall also indicate the city, village, borough, town, or township to which the premium tax should be allocated. Before July 1 following, the commissioner shall certify to the state auditor the name of each city, village, borough, town, or township 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 city, village, borough, town, or township, and upon property located within the corporate limits of such other cities, villages, boroughs, towns, and townships as have been certified to the commissioner as having service contracts with such first mentioned city, village, borough, town, or township 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. (As amended Feb. 25, 1943, c. 75, §2.)

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

3725. Auditor's warrant.

Village may continue to receive its share of 2% premium tax after discontinuance of relief association. Op. Atty. Gen., (198B-1), Oct. 30, 1939.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

Disbursements by state auditor to fire department relief association of a village should be to the treasurer of that association and not to the treasurer of the municipality. Op. Atty. Gen. (198b-8), Dec. 7, 1943.

3726. Special fund—Disbursements—Payments.—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 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.

(3) 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. (As amended Apr. 6, 1943, c. 323, §2.)

Firemen's relief association may not spend any part of special fund derived from two per cent gross insurance premium tax for uniforms for members to be worn only for dress purposes. Op. Atty. Gen., (198B-10(e)), Oct. 23, 1939.

Since statute was amended by Laws 1937, chapter 349, procedure by application to district court is no longer required in connection with disposition of money upon disbandment of relief association. Op. Atty. Gen., (198a), Nov. 21, 1939, modifying, Op. Atty. Gen., Oct. 30, 1939.

Funds belonging to Firemen's Relief Association may be used to purchase a new fire truck, or may be invested in warrants or certificates of indebtedness of village, regardless of source of funds. Op. Atty. Gen., (198B-5), Jan. 16, 1941.

Title to fire truck, whatever funds are used for purchase, should be vested in village and not in relief association. Op. Atty. Gen. (688C-1), Aug. 22, 1941.

Village may expend money levied for fire department and premium tax and general funds for equipment and maintenance of fire department. Id.

Fund may not be used to buy accident, health and hospitalization insurance for volunteer members of department and families, relief must be direct. Op. Atty. Gen. (198b-10(d)), Dec. 3, 1941.

Where there is no relief association, council has power to authorize treasurer to invest funds accumulated either by 2% premium payments or by one mill tax. Op. Atty. Gen. (198B-8), Feb. 6, 1942.

Where there is a paid volunteer fire department, but no firemen's relief association, disbursement of money should be handled by city council through enactment of a comprehensive ordinance which would fully set forth a schedule of payment, village treasurer disbursing money in accordance therewith. Id.

No part of funeral benefit of a member may be paid on death of wife member. Op. Atty. Gen. (198b-3), May 1, 1943.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

Moneys resulting form 2% tax paid by insurance companies may be used for uniforms and equipment in a city where there is a firemen's relief association. Op. Atty. Gen. (198b-10-e), Sept. 21, 1943.

There is no longer need for more than one special fund, in addition to a general fund which should also be maintained. Op. Atty. Gen. (198a-2), Sept. 30, 1943.

(2).

Association may not use funds to construct building for express purpose of renting part of it for commercial use, but this would not prevent it from renting out part of a building owned by it and not presently necessary for use. Op. Atty. Gen., (198B-10(a)), Jan. 18, 1940.

Where members of fire department relief association were driving fire truck owned respectively by city and association, and there was a collision, city could not recover damage to city owned truck arising out of negligence of driver of association owned truck, notwithstanding that association carried liability insurance. Op. Atty. Gen., (844B-4), March 5, 1940.

3727. Annual report—Examination of books.—The secretary and treasurer of every such association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purpose the money has been paid and expended, and, on or before September 1, file it with the clerk of the municipality and a duplicate with the commissioner of insurance. No money shall be paid to such association until such report is so filed. No one serving as a substitute or on probation, nor any fireman in a municipality having such association who is not a member thereof, shall be deemed a fireman within the meaning of this subdivision. No treasurer of any such association shall enter upon his duties until he shall have given to the association a good and sufficient bond for the faithful discharge of his duty according to law. All the financial books and accounts of such association and municipality shall be subject at all times to examination by the public examiner, and he is hereby authorized and empowered to make such examination when complaint is duly made to him that the money, or any part thereof, paid under the provisions of this chapter to the treasurer of any municipality or relief association, has been or is being expended for an unauthorized purpose, shall so report to the governor, upon whose direction to the auditor no further warrants shall be issued to such municipality until the money so expended has been replaced. (As amended Act Feb. 25, 1943, c. 75, §3.)

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

3728. Service pension.

Firemen's relief associations in cities of the second class. Laws 1941, c. 267.

A fireman who qualified by service is entitled to his pension upon reaching age of 50 years though he resigned at age of 48. Op. Atty. Gen., (198B-6(e)), Oct. 23, 1939.

Requirements as to age, years of service and membership are merely minimum requirements, and association may impose additional conditions as to age, service and membership, and such conditions may be set out in certificates or by-laws. Op. Atty. Gen. [198B-6(e)], Aug. 31, 1940.

Where fireman was retired for total disability on account of injuries not in line of duty, after serving only 13 years, fact that he subsequently died had no effect on right to pension, but a funeral benefit could be paid if provided for by by-laws of association. Op. Atty. Gen. (198B-6-f), Dec. 18, 1940.

Statute is controlling over by-laws of a village relief association as to eligibility of members for pension. Id.

Pension may not be paid to any person while he is an active member of fire department. Op. Atty. Gen. (198a), Apr. 30, 1942.

Articles of incorporation establishing a fund for the relief and support of sick, injured or disabled members are sufficiently broad to include benefits for injury and sick benefits, and under the statute by-laws provided death benefits though articles only provide for relief for widows and orphans, and statutes authorized payment of pension benefits by an association when its certificate of incorporation or by-laws so provide. Statute is clear that to qualify for pension member shall have done "active" duty for 20 years or more and by-laws must be read to conform therewith. Ex-official members of the board of trustee have the same voice and functions as do other trustees elected from members of the association, though they are not members of the association and are not therefore entitled to attend and vote at meetings of the members. In city of Gilbert association cannot accept dues from members who have left the community and are no longer giving active service as fireman, unless such members are either on temporary leave for a period of no greater than 6 months immediately preceding annual meeting of the association or are on temporary leave with the consent of the directors within a 2 year period provided, or have received honorable discharge from the Fire Department and have complied with the provisions of articles. Officers of association must drop members who tender dues and assessments to the association but who no longer live in the municipality, except those specified. Members in the military service are entitled to a leave of absence during such device with right of reinstatement. Op. Atty. Gen. (198a-3), Apr. 30, 1943, June 4, 1943.

A service pension may be granted to anyone who complies with eligibility requirement of this law and the Articles of Incorporation and by-laws regardless of whether he is disabled or not and regardless of the source of his disability Op. Atty. Gen. (198b-6-d), June 9, 1943.

Any plan which sets a maximum payment in a lump sum is invalid and contrary to the statute. Op. Atty. Gen. (198a-2), Sept. 30, 1943, rev'g Op. Atty. Gen. Apr. 29, 1935.

Gilbert Fire Department Relief Association pension system is invalid. Id.

When pensions are computed on a monthly basis, the amount payable may be commuted to a lump sum payment, but not until time of retirement. Op. Atty. Gen. (198a-2), Nov. 23, 1943.

Change of address does not affect rights of one whose right to pension has accrued. Op. Atty. Gen. (198a-2), Nov. 23, 1943.

Association may limit length of time for which a pension is to be paid, and a provision as to commutation would have to provide that the amount to be paid in a lump sum would have to be the present worth. Op. Atty. Gen. (198b-6-(a)), Dec. 22, 1943.

3728-1. Firemen's relief association in certain cities.

Firemen's relief associations in cities of the second class, see §§1648-1 to 1648-35.

Where association is authorized to pay a basic pension of $75 per month, a retired fireman who served 26 years, 10 months, and 18 days is entitled to $93 per month and not $96. Op. Atty. Gen., (198B-6(a)), Nov. 1, 1939.

Section is apparently only applicable to associations existing in cities of the third class. Op. Atty. Gen. (198B-6-f), Dec. 18, 1940.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

3728-3. Deductions from salaries.—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 four 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 against all taxable property of the city in such an amount as to maintain the balance in the special fund at $65,000; provided that at no time shall the amount so levied exceed the sum of $5,000. 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. (As amended Apr. 9, 1943, c. 360, §1.)

3728-4. Annual report of secretary filed with city clerk.—The secretary of said association shall file on or before the first day of September of each year with the city clerk and the commissioner of insurance a detailed report of the amount of money or property so received, expended, and 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. (As amended Act Feb. 25, 1943, c. 74, §1.)

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

3728-7. Benefits other than service pension.

Laws 1943, c. 170, provides: that cities having a population of 18,000 to 20,000, shall maintain a firemen's relief association which shall be incorporated under laws of Minnesota.

Laws of 1943, c. 397, §§1-29, provides that in cities of the third class with a population of less than 13,000, an assessed valuation of $5,000,000 to $9,000,000, the fire department shall maintain a firemen's relief association incorporated under laws of Minnesota, and provides for organization, membership, officers, reports to commissioner, tax levy, by-laws, amount of pensions and retirements.

3745. Membership in police or fire department relief associations.

Police officers who enlist or are drafted into military service are not eligible to continue as members of pension system. Op. Atty. Gen., (785J), Mar. 19, 1941

3750-1. Firemen's relief associations in cities of first class established.

Firemen's relief associations in cities of the second class, see §§1648-1 to 1648-35.

3750-3. Members.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

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 mem-

bership in such relief association on forms supplied by such association, accompanied by one or more physicians 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 member of the fire department in any city of the first class on January 1, 1941, may be eligible to membership in a firemen's relief association. Such member 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. (As amended Act Apr. 16, 1941, c. 258, §1.)

3750-10. State Auditor to distribute monies.

Persons to whom state auditor shall issue warrant each fiscal year for premium tax paid by insurance company to the state—filing financial reports as prerequisite. Op. Atty. Gen. (254d), June 24, 1943.

Disbursements by state auditor to fire department relief association of a village should be to the treasurer of that association and not to the treasurer of the municipality. Op. Atty. Gen. (198b-8), Dec. 7, 1943.

§3750-12. Tax levy for firemen's relief association.—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 $500,000, 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 it situated, and by said county shall be collected and payment thereof enforced when and in like manner as state and county taxes are paid. (As amended Apr. 6, 1943, c. 316, §1.)

3750-23. War service to be included in period of service—National defense emergency.—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 any war or national defense emergency, or having during such war or emergency entered the employment of the government of the United States and in such service rendered fire prevention service during such war or emergency, 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 be counted in computing the period of service hereinbefore provided for, but during such period of military or fire prevention service he shall not be considered as an active member of his association. (As amended Act Apr. 16, 1941, c. 258, §2.)

PENALTIES

3756. Issue of prohibited life policies.

Laws 1941, c. 218, amending Mason's Minn. St., §3406, was not properly passed and is invalid. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8895.

3757. When agent of insurer; etc.

Where one was defrauded and paid money to a person who happened to be general agent of an insurance company, fraud being independent of employment as agent, there existed a constructive trust in favor of defrauded person, but he had no right of acttion against insurance company to whom agent paid the money to cover up embezzlement of premiums, company having no knowledge of the embezzlement or fraud practiced by agent. Blumberg v. Taggart, 213M39, 5NW(2d)388. See Dun. Dig. 4709.

A continuous premium deferred life annuity policy became operative when money equal to all premiums to be paid was delivered to and accepted by an agent authorized to receive it, though agent embezzled the money. Id. See Dun. Dig. 4704.

3762. Violations of chapter.

Laws, 1941, c. 218, amending Mason's St., §3406, was not properly passed and is invalid. Minn. Mut. Life Ins. Co. v. Johnson, 212M571, 4NW(2d)625. See Dun. Dig. 8895.

3766. Rebate on insurance contracts prohibited.

Discrimination by insurance companies in issuance of automobile liability insurance prohibited. Laws 1941, c. 283, see §3560-1.

Granting of rates on policies covering fleets of cars, where same are not under one ownership and management, at a lower rate than available to other purchasers in same class, constitutes a violation of this section. Op. Atty. Gen. (249B-3), June 18, 1940.

Commissioner is without authority to rule that rates charged for fidelity and surety contracts must be filed before they are effective, but it is proper for him to request that such rates be filed with his department in order to determine violations of law. Op. Atty. Gen. (250-b), Apr. 9, 1941.

Proposed plan of war department for a comprehensive rating plan for national defense projects let on a "cost-plus-a-fixed fee" basis to enable federal government to pay lower premium charges than otherwise upon project, may be legally approved. Op. Atty. Gen. (249B-21), Aug. 6, 1941.

Title to Laws 1909, c. 427, is sufficient to prohibit granting of lower rates to certain insureds under the guise of fictitious fleets. Op. Atty. Gen. (249b-3), June 3, 1942.

Premiums on public liability insurance are not set by law or public authorities. Op. Atty. Gen. (59a-(25)), Dec. 24, 1943.

3766-1. Discrimination.—No insurance company or its agent shall refuse to issue any standard policy of automobile liability insurance or make any discrimination in the acceptance of risks, in rates, premiums, dividends or benefits of any kind, or by way of rebate between persons of the same class, nor on account of race. Every company or agent violating any of the foregoing provisions shall be fined not less than $50.00 nor more than $100.00 and every officer, agent or solicitor violating the same shall be guilty of a misdemeanor. (Act Apr. 17, 1941, c. 283, §1.) [72.17]

3768. Application of act.—The provisions of this act shall not apply to any policy or policies procured by officers, agents, sub-agents, brokers, employees, intermediaries or representatives wholly and solely upon property of which they are respectively the owner at the time of procuring such policy or policies, where such officers, agents, subagents, brokers, employees, intermediaries or representatives are, and have been for more than six months prior to the issuing of such policy or policies, regularly employed by, or connected with, the company or association issuing said policy or policies; and any life insurance company doing business in this state may issue industrial policies of life or endowment insurance, with or without annuities with special rates of premiums less than the usual rates of premiums for such policies to members of labor organizations, credit unions, lodges, beneficial societies, or similar organizations, or employees of one employer, who through their secretary, or employer may take out insurance in an aggregate of not less than fifty members, and pay their premiums through such secretary or employer. (As amended Act Apr. 28, 1941, c. 505, §1.)