1936 Supplement

To

Mason's Minnesota Statutes

1927

(1927 to 1936)

(Superseding Mason's 1931 and 1934 Supplements)

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

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to be voluntarily assumed. All moneys received by any school district or township pursuant to this section shall be applied to the payment of such past due bonds and interest. (Act Apr. 22, 1933, c. 402, §12.)

4031-87. Violation of rules a misdemeanor.—Any person who within the limits of any such project shall wilfully violate or fail to comply with any rule or regulation of the Department of Conservation adopted and promulgated in accordance with the provisions of this Act shall be deemed guilty of a misdemeanor. (Act Apr. 22, 1933, c. 402, §13.)

4031-88. Provisions separable.—This Act shall be held unconstitutional only in the event that some major provisions of the Act are found unconstitutional and invalid that would make the Act unworkable. If any minor provisions of this Act are held unconstitutional it shall in no way affect or invalidate any other provision or part thereof; and this Act shall be deemed workable if Section 5 thereof is constitutional. (Act Apr. 22, 1933, c. 402, §14.)

CHAPTER 23

Department of Labor and Industries

INDUSTRIAL COMMISSION

4039. Hours public sessions—Proceedings.
Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not report filed under 4197. Op. Atty. Gen. (851j), July 23, 1935.

4041. Secretary—Salary—Duties.
Salary of secretary placed at maximum of $3600 may be fixed under Laws 1935, c. 391, §37, at $3000, notwithstanding that that was the amount he was receiving at the passage of the act. Op. Atty. Gen. (231a), July 19, 1935.

4042. May appoint division heads, assistants, etc.
A chief factory inspector need not pass a competitive examination. Op. Atty. Gen., Dec. 21, 1931.
Industrial commission has power without restriction or restraint to appoint and remove certain designated employes or officials. Op. Atty. Gen., May 10, 1933.

4044. Powers of department of labor and industries transferred to commission.
G. S. 1913, §§3940-3946 are still applicable under this section.

4046. Powers and duties.
State regulations providing minimum wage in excess of that fixed under industry codes under the NRA are controlling. Op. Atty. Gen., Oct. 28, 1933.
Strikes and boycotts—right to picket in non-labor disputes. 19MinnLawRev817.

4048. Qualifications of inspectors.
Op. Atty. Gen., May 10, 1933; note under §4042.
In view of Laws 1921, c. 81, a chief factory inspector need not pass a competitive examination. Op. Atty. Gen., Dec. 21, 1931.

4049. Terms defined.
Section 9193(3), limiting the time to sue for damages, "caused by a milldam," to two years after the cause of action accrues, applies to an action to recover damages for flooding caused by a dam erected by a public service corporation for the purpose of generating electric current to be distributed and sold to the public for lighting, heating and power purposes. Zamani v. O., 182M355, 234 NW457. See Dun. Dig. 5605(79), 5655.

4050. Enforcement of labor laws by labor department.
Industrial commission has power to gather wage data and to examine wage records of adult women. Op. Atty. Gen., June 26, 1933.

4050-1. Industrial commission to make study of conditions.—For the purpose of improving the State employment offices and other employment agencies under its supervision, and to enable it to more efficiently perform the duties imposed upon it, and in cooperation with the federal authorities in an intelligent, long-time employment program, the State Industrial Commission is hereby authorized to make a thorough, comprehensive, scientific and objective study of labor conditions, and to gather and record authentic and scientific data in relation thereto, and in this connection to operate a laboratory experiment or demonstration station or stations. (Act Jan. 29, 1931, c. 5, §1.)

4050-2. May receive gifts.—The industrial commission is hereby authorized to receive and accept gifts or contributions of funds to be used in carrying out the purposes of Section 1 [§4050-1] hereof, and to assist in the supervision and conduct of said study, and to defray, in whole or in part, the cost of said work. (Act Jan. 29, 1931, c. 5. §2.)

4050-3. Supervision of funds.—Any funds or contributions so made shall be under the exclusive supervision and control of said industrial commission, may be deposited in such bank or banks as it may select, and may be disbursed in such manner and for such purposes as said industrial commission shall determine, consistent however, with the provisions of this act and with the conditions and purposes of any such gift or contribution. (Act Jan. 29, 1931, c. 5, §3.)
Sec. 4 provides that the act shall take effect from and after its passage.

FOUNDRIES

4075. Various definitions.
See §1630-4(12).

HOURS OF, AND RESTRICTIONS ON, LABOR

4091. Locomotive engineers, etc.—Hours.
Law restricting hours of continuous labor more than do federal regulations prescribed by sections 61 and 62, ch. 3, Tit. 45 of the U. S. Code, is unconstitutional. Op. Atty. Gen., Mar. 21, 1933.
The purpose of House File No. 23 of Special Session of 1932 which would amend §§4091 and 4092 is to regulate intrastate commerce and not interstate commerce, and thus construed would be constitutional. Op. Atty. Gen., Dec. 21, 1933.

4092. Certain railroad employees—Hours.
Op. Atty. Gen., Mar. 21, 1933; note under §4091.
Op. Atty. Gen., Dec. 21, 1933; note under §4091.

4094. Employment of children under fourteen years.—No child under fourteen (14) years of age shall be employed, permitted or suffered to work at any time, in or in connection with any factory, mill or workshop, or in any mine; or in the construction of any building, or about any engineering work; it shall be unlawful for any person, firm or corporation, to employ or exhibit any child under fourteen (14) years of age in any business or service whatever, during any part of the term during which the public schools of the district in which the child resides are in session. ('07, c. 299; '12, c. 8, §1; G. S. '13, §3839; '13, c. 516, §1; Apr. 18, 1929, c. 234, §1.)
No exception in favor of agricultural employment. Op. Atty. Gen., June 21, 1929.
"While school is in session," means hours from 9:00 A. M. to 4:00 P. M. each day and not full school year. Op. Atty. Gen., Apr. 22, 1933.
Section does not prohibit employment after school hours or on Saturdays and holidays. Op. Atty. Gen. (270a-4), Apr. 15, 1935.

4100. Children under 16—Hours of employment—Posted notice.
The fact that the beneficiaries, the parents of the decedent, violated §§4100 and 4101 does not constitute contributory negligence as a matter of law so as to entitle defendants to judgment non obstante. Weber v. B., 182 M486, 234NW682. See Dun. Dig. 2616(10).
Applicable to agricultural employment. Op. Atty. Gen., June 21, 1929.
Op. Atty. Gen., Apr. 6, 1931; note under §§4103, 4106.
The provision of the Street Trades Law, Laws 1921, c. 318, §1, which permits children under 16 to sell papers after 7 o'clock at night, modifies this section. Op. Atty. Gen., Apr. 6, 1931.
The use of children under 16 in hotel entertainment after 7. P. M. is a violation of the Child Labor Law, in

the absence of a proper permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers." Op. Atty. Gen., Dec. 22, 1931.

Children under 16 years of age appearing in singing and dancing acts after 7 P. M., for which father is paid compensation, are engaged in a gainful occupation within meaning of this section. Op. Atty. Gen. (270a-5), Aug. 25, 1934.

4101. Penalties for violation.

Weber v. B., 182M486, 234NW682; note under §4100.

"Whoever" means any person, including a father, who has under his control a child under 16 years of age and who permits such child to be employed without permit in violation of §4100. Op. Atty. Gen. (270a-5), Aug. 25, 1934.

4103. Children under specified ages—Prohibited employments—Penalties.—No person shall employ or permit any child under the age of sixteen (16) years to serve or work as an employe of such person in any of the following occupations:

Sewing or adjusting belts used on machinery; oiling or assisting in oiling, wiping, or cleaning machinery; operating or assisting in operating circular or band saws, wood shapers, wood jointers, planers, sandpaper or wood-polishing machinery, emery or polishing wheels used for polishing metal, wood turning or boring machinery, stamping machines in sheet metal and tin-ware manufacture, stamping machines in washer and nut factories; operating corrugating rolls used in roofing factories; operating a steam boiler, steam machinery, or other steam generating apparatus; setting pins in bowling alleys; operating or assisting in operating dough grates or cracker machinery; operating wire or iron straightening machinery; operating or assisting in operating rolling mill machinery; punches or shears, washing, grinding or mixing mill; operating calendar rolls in rubber manufacturing; operating or assisting in operating laundry machinery; preparing or assisting in preparing any composition in which dangerous or poisonous acids are used; operating or assisting in operating any passenger or freight elevator; manufacturing of goods for immoral purposes; nor in any other employment or occupation dangerous to the life, limb, health or morals of such child.

No female under sixteen (16) years of age shall be employed where such employment requires such female to stand constantly during such employment.

No child under the age of eighteen (18) years shall be employed as a rope or wire walker, contortionist, or at flying rings, horizontal bars, trapeze or other aerial acts, pyramiding, weight lifting, balancing, or casting acts, or in any practices or exhibitions dangerous or injurious to the life, limb, health or morals of such child.

No child under the age of ten years, whether or not a resident of this state, may be employed or exhibited in any theatrical exhibition except in the cases hereinafter referred to.

No child over the age of ten years and under the age of 16 years, whether or not a resident of this state, shall be employed or exhibited in any theatrical entertainment except with the permission of the Industrial Commission; provided that under a permit hereinafter provided for one or more children under the age of 16 years may participate in a family group with either or both of their parents in instrumental musical performance not prohibited as being dangerous or injurious to the health, life, limb or morals of such child or children and not detrimental to their education; and provided, that under such a permit a child or children under the age of 16 years may participate in legitimate dramatic performances by adults where some part or parts can only be portrayed by a child or children and where no singing, dancing, or acrobatic performance nor any practice or exhibition dangerous or injurious to the life, limbs, health or morals is performed by such child or children.

In the event it is desired to employ or exhibit in any theatrical entertainment a child within the age limits permitted by law, during that portion of the year when such employment or exhibition is permitted, written application shall be made to the Industrial Commission, specifying the name of the child, its age, and the names and residence of its parent or guardian, the nature, and kind of such performances; the dates, duration and number of performances desired, together with the place and character of the exhibition.

Application for any permit under this act shall be made at least 72 hours before the first performance at which it is desired to exhibit such child.

The Industrial Commission shall, through its Division of Women and Children, investigate each application and shall have power to grant a permit for such employment or exhibition not prohibited by law and for any period during which such employment or exhibition is not prohibited by law after it shall first find that the health, education or school work, morals and welfare will not be detrimentally affected by such employment or exhibition or by the environment in which the same is rehearsed or given. Such permit shall specify the name and residence of the child and the nature and date of performances and the number and duration thereof permitted.

The Industrial Commission shall revoke any permit whenever, in its opinion the exhibition of any child in any performance is detrimental to its health, welfare or morals or is interfering with its education.

Nothing contained in this section or in Section 4094, General Statutes 1923, shall prohibit the appearance of any child in an entertainment given by one or more religious or educational organizations or by a neighborhood association of parents of the children who may perform before it or in any recital connected with the teaching of the art or practice of music; but this proviso shall not be construed as authorizing the appearance of any child in any such entertainment at which an admission fee is charged unless the entire program is furnished by and for the benefit of such religious or educational organization or neighborhood association at such recital unless the entire program is furnished by the pupils of the teachers sponsoring the recital.

Any person violating any of the provisions of this act shall be guilty of a misdemeanor. ('07, c. 299; '12, c. 8, §10; G. S. '13, §3848; '13, c.c. 120, 516, §2; '27, c. 388, §1; Apr. 18, 1929, c. 234, §2.)

Decedent having met death in an occupation prohibited by law at his age, the case is not within the jurisdiction of the Industrial Commission. Weber v. B., 182M486, 234NW682. See Dun. Dig. 10394(47).

As to the power company, the jury could find that the defense of contributory negligence of the deceased was not established, and such defense was not available to the defendant employer, because of its violation of section. Weber v. B., 182M486, 234NW682. See Dun. Dig. 6000, 6016.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plaintiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employes in the packing corporation worked, and the latter employing a boy under 16 in an occupation dangerous to life and limb. Weber v. B., 182M486, 234NW682. See Dun. Dig. 2996, 5859.

Op. Atty. Gen., Apr. 6, 1931; notes under §§4100, 4106.

"Theatrical entertainment" and "theatrical exhibition" defined. Op. Atty. Gen., Apr. 6, 1931.

The use of children under the age of 16 as entertainment features at a night club would be a violation of the Child Labor Law, unless the children were engaged in a theatrical entertainment under a permit from the Industrial Commission. Op. Atty. Gen., Apr. 6, 1931.

This section does not prohibit children being taught to operate power sewing machines and who pay a tuition. Op. Atty. Gen., Apr. 10, 1931.

This section does not permit the appearance of a child under ten years of age as a singer in a theater wherein the father plays an instrument in the orchestra. Op. Atty. Gen., Aug. 21, 1931.

County and state fairs are not educational organizations within the meaning of statute. Op. Atty. Gen., Aug. 21, 1931.

A dancing exhibition participated in by children under ten years of age and given in connection with a movie performance in a theater is not to be construed as a "recital connected with the teaching of the art or practice of music," though the exhibition is put on by a

dancing teacher and the performers are her pupils. Op. Atty. Gen., Aug. 21, 1931.

A child under ten years of age may participate in a family group in giving an instrumental musical performance providing that a permit is obtained. Op. Atty. Gen., Aug. 21, 1931.

Children under ten years of age cannot appear in a singing and dancing act under the auspices of the Minneapolis Park Board, though no admission fee is charged. Op. Atty. Gen., Aug. 21, 1931.

An ordinary lodge is neither a religious nor educational organization, and a child under ten years of age can only appear at a benefit performance under a permit. Op. Atty. Gen., Aug. 21, 1931.

Does not permit appearance of a movie star of eight years of age on the stage for the purpose of giving a monologue. Op. Atty. Gen., Aug. 21, 1931.

Fact that parent merely accompanies child on the stage is of no legal consequence. Op. Atty. Gen., Aug. 21, 1931.

Boys regularly employed as newspaper carriers are exempt from the provisions of the law only while distributing papers to their regular subscribers, and not at times that they are on the street in their regular districts selling papers. Op. Atty. Gen., Nov. 25, 1931.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers. Op. Atty. Gen., Dec. 22, 1931.

Both booking agent and operator of night club can be prosecuted for violation of this section. Op. Atty. Gen. (270a), June 27, 1934.

4106. Certain employments forbidden—penalties.—No boy under sixteen years of age and no girl under eighteen years of age shall engage in or carry on or be employed or permitted or suffered to be employed in any city of the first, second or third class in the occupation of peddling, bootblacking or distributing or selling newspapers, magazines, periodicals or circulars upon the streets or in public places; provided, however, that any boy between fourteen and sixteen years of age, upon application to the school authorities as in the case of application for an employment certificate, and upon compliance with all the requirements for the issuance of an employment certificate, shall receive a permit and badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations between the hours of five o'clock A. M., and eight o'clock P. M., of each day, but at no other time, except as provided in Section 3 hereof; and, providing further, that any boy between twelve and sixteen years of age, upon application as provided in the preceding section and upon due proof of age and physical fitness in the manner provided by law for the issuance of employment certificates, may receive a permit and a badge from the officer authorized to issue employment certificates which shall authorize the recipient to engage in said occupations during those hours between five o'clock A. M. and eight o'clock P. M., when the public schools of the city where such boy reside are not in session; but at no other time except as provided in Section 3 hereof.

Any person who knowingly and wilfully employs or permits or suffers to be employed any child in violation of this section, or any person who knowingly and wilfully aids or abets any child to violate the provisions of this section shall be guilty of a misdemeanor. ('21, c. 318, §1; Mar. 7, 1933, c. 63.)

Op. Atty. Gen., Apr. 6, 1931; note under §§4100, 4103.

The engagement of a boy under 14 to broadcast for pay on a radio station during school hours is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

Engagement of a boy under the age of 16 as a paid piano player and musical entertainer in a ballroom after 7. P. M. is a violation of law. Op. Atty. Gen., Apr. 6, 1931.

Child selling poppies on street without compensation violates this section. Op. Atty. Gen., June 8, 1933.

Section does not prohibit sale of magazines or periodicals by boys at homes of private individuals. Op. Atty. Gen. (270a-4), Apr. 15, 1935.

4109. Violation of act delinquency—Enforcement.

Op. Atty. Gen., Nov. 25, 1931; note under §4106.

4111. Act not applicable to carriers.

Boys employed by an adult to distribute newspapers for the adult cannot be said to be "regularly employed newspaper carriers." Op. Atty. Gen., Dec. 22, 1931.

4111–1. Employment of minors prohibited.—No person under the age of 18 years shall be employed, permitted or suffered to work, or to appear as a participant, in or in connection with any walkathon, dance marathon or similar contest, night club, beer parlor or other place of like nature or character. (Act Apr. 5, 1935, c. 109, §1.)

4111–2. Certain acts a misdemeanor.—Any person who employs, causes or suffers to be employed, or who exhibits, uses, or has in custody for the purpose of exhibition, use or employment, any child under 18 years, or who, having the care, custody or control of any such child as parent, relative or guardian, employer or otherwise, sells, lets out, gives away, or in any way procures or consents to the employment, or to such use or exhibition of such child, or who neglects or refuses to restrain such child from engaging or acting in any occupation prohibited by this section, shall be guilty of a misdemeanor. (Act Apr. 5, 1935, c. 109, §2.)

4111–3. Application of act.—This act shall not apply to participation in any theatrical performance as defined and regulated by Mason's Minnesota Statutes of 1927, Section 4103. (Act Apr. 5, 1935, c. 109, §3.)

4116 to 4126 [Repealed].

Repealed Apr. 20, 1933, c. 354, §7, post, §4126-8, effective July 1, 1933.

These sections have been declared unconstitutional by the attorney general in opinions, abstracts of which are set forth below:

In submitting to the governor for his approval the bill attempting to limit the hours of employment of women, certain amendments in the bill as passed by the senate and house were inadvertently omitted, with the result that the bill as approved by the governor, filed with the secretary of state, and published as Laws 1923, c. 422 (Mason's Minn. Stat., 1927, secs. 4116-4126), was never constitutionally enacted. Op. Atty. Gen., June 25, 1926.

Laws 1923, c. 422 [Mason's Minn. Stat., 1927, secs. 4116-4126], never having been constitutionally enacted, the hours of employment for women in cities of the first and second class are governed by Laws 1913, c. 581 [set forth post as §§4126-½ to 4126-½b], and as to all other cities Laws 1909, c. 499 [set forth post as §§4126-½c to 4126-½h], is applicable. Op. Atty. Gen., May 8, 1931.

4126-½ to 4126-½b. [Repealed].

Repealed Apr. 20, 1933, c. 354, §7, post, §4126-8, effective July 1, 1933.

§4126-½.

See notes under §§4116 to 4126.

The only law regulating the hours of women working in lunch rooms is Laws 1913, c. 581, which applies only to cities of the first and second class. Op. Atty. Gen., May 8, 1931.

The phrase "in cities of the first and second class," is not limited to women employed in telephone or telegraph establishments. Op. Atty. Gen., May 8, 1931.

Under Laws 1913, chapter 581, minimum wage commission has no authority to regulate the hours of certain workers of the state outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

§4126-½a.

Sections 3, 4 and 5 of Laws 1913, c. 581, were expressly repealed by Laws 1919, c. 491, §20, set forth in Mason's Minn. Stat., 1927, as §4190.

4126-½c to 4126-½h [Repealed].

Repealed Apr. 20, 1933, c. 354, §7, post, §4126-8, effective July 1, 1933.

4126-½c.

See notes under §§4116 to 4126.

4126–2. Hours of female employees limited.—No female shall be employed in any public housekeeping, manufacturing, mechanical, mercantile, or laundry occupation, or as a telephone operator for more than fifty-four hours in any one week; provided that this Act shall not apply to cases of emergency in which the safety, health, morals, or welfare of the public may otherwise be affected, or to cases in which night employees may be at the place of employment for no more than twelve hours and shall have opportunity for at least four hours of sleep, or to employees engaged in the seasonal occupation of preserving perishable gruits, grains or vegetables, where such employment does not continue over a longer period than seventy-five days in any one year, or to telephone operators in municipalities of less than fifteen hundred inhabitants; provided, however, that upon application of any employer, the Industrial Commission may in its discretion, for cause shown exempt any employer

or class of employers from the provisions of this Act.

Provided further, that during emergency periods of not to exceed four weeks in the aggregate in any calendar year, the Industrial Commission of Minnesota may, in its discretion, allow longer period of employment for such female employees under such general rules and regulations as the Commission may prescribe and adopt. (Act Apr. 20, 1933, c. 354, §1.)

General office employes and women executives in a mercantile establishment do not come within classification of a mercantile occupation and are not regulated by maximum of 54 hours per week. Op. Atty. Gen., June 21, 1933.

Hours of women employes other than telephone operators, janitresses and elevator operators in banks and offices are not subject to regulations in this act. Id.

"Public housekeeping" embraces kitchen employes, waitresses and chamber maids in a girls' private school and in an old folks' home. Op. Atty. Gen., Sept. 15, 1933.

4126-3. Industrial commission to print schedule.—The Industrial Commission of Minnesota shall supply the abstract of the provisions of this act and the form for the schedules of hours of labor required for this act to all employers to whom this act shall apply upon application therefor. (Act Apr. 20, 1933, c. 354, §2.)

4126-4. Violations a misdemeanor.—Any employer or any agent acting for an employer who shall require or suffer any such employe to work at any business, establishments or company to which this act applies more than the number of hours provided in this act, or who shall fail, neglect or refuse so to arrange the work of such employes in his employ that they shall not work more than the number of hours provided for in this act during any one week; or who shall knowingly permit or suffer any overseer, superintendent, foreman or forelady, or other agents of any employer to violate any of the provisions of this act, shall be guilty of a misdemeanor and upon conviction thereof shall be fined for each offense in the sum of not less than twenty-five dollars nor more than one hundred dollars. Whenever any person shall have been notified by the Industrial Commission or by the service of a summons in a prosecution, that he is violating any provisions of this act, he shall be punished by like penalty in addition for each and every day that such violation shall have continued after such notification. (Act Apr. 20, 1933, c. 354, §3.)

4126-5. Employer to keep record.—Every employer having in his employ more than six female employees shall a keep time book or record stating the number of hours worked by each female employee in his employment on each day of such employment, and the total hours of each week, and the hours of beginning and stopping such work. Such time book or record shall be open to the inspection of the Industrial Commission of Minnesota, or any duly accredited representative of said commission, during any period of employment. Any employer who wilfully fails to keep such time book or record required by this section, or who makes any false statements therein or refuses to exhibit such time book or record, or makes any false statement to the Industrial Commission, or its duly accredited representatives in reply to questions submitted for the purpose of carrying out the provisions of this act, shall be guilty of a misdemeanor, and upon conviction thereof shall be subject to a fine for each offense in the sum of not less than ten dollars ($10.00) nor more than twenty-five dollars ($25.00). (Act Apr. 20, 1933, c. 354, §4.)

Section does not require keeping of a time record where employes' occupation is not regulated by this act. Op. Atty. Gen., June 21, 1933.

4126-6. Industrial commission to enforce act.—The Industrial Commission of Minnesota shall be charged with the duty of enforcing the provisions of this act prosecuting all violations thereof. (Act Apr. 20, 1933, c. 354, §5.)

4126-7. Provisions separable.—Each section of this Act every part thereof is hereby declared to be an independent section or part of a section, and if any section, subsection, sentence, clause or phrase of this act shall for any reason be held unconstitutional the validity of the remaining phrases, clauses, sentences, subsections and sections of this act shall not be affected thereby. (Act Apr. 20, 1933, c. 354, §6.)

4126-8. Inconsistent acts repealed.—All Acts and parts of Acts in conflict with the provisions of this Act hereby are repealed, and Laws 1909, Chapter 499, Laws 1913, Chapter 581, Laws 1923, Chapter 422, hereby are repealed. (Act Apr. 20, 1933, c. 354, §7.)

4126-9. Definitions.—Throughout this Act the following words and phrases as used herein shall be considered to have the following meaning:

1. The term "laundry" shall mean processes connected with the receiving, marking, washing, cleaning, ironing, and distribution of washable or cleaning materials.

2. The term "public housekeeping" shall mean the work of waitresses in restaurants, hotel dining rooms, boarding houses, and all attendants employed at ice cream and light lunch stands and steam table or counter work in cafeterias and delicatessens where freshly cooked foods are served, and the work of chambermaids in hotels and lodging houses and boarding houses and hospitals, and the work of janitresses and car cleaners and of kitchen workers in hotels and restaurants and hospitals and elevator operators.

3. The term "manufacturing" and "mechanical" shall mean processes in the production and distribution of commodities, and manual labor with the aid of machines and tools.

4. The term "mercantile" shall mean the sales force, the wrapping employees, the shipping department employees, the receiving marking and stockroom employees, all employees in any way directly connected with the sale, purchase, and disposition of goods, wares, and merchandise. (Act Apr. 20, 1933, c. 354, §8.)

4126-10. Effective July 1, 1933.—This act shall take effect and be in force from and after July 1 1933. (Act Apr. 20, 1933, c. 354, §9.)

4126-11. Employers to give written statement to employees in certain cases.—Whenever a contract of employment is consummated between an employer and an employe for work to be performed in this state, or for work to be performed in another state for an employer localized in this state, the employer shall give to the employe a written and signed agreement of hire, which shall clearly and plainly state:

(a) The date on which the agreement was entered into.

(b) The date on which the services of the employe are to begin.

(c) The rate of pay per unit of time, or of commission or by the piece, so that wages due may be readily computed.

(d) The number of hours a day which shall constitute a regular day's work, and whether or not additional hours the employe is required to work shall constitute overtime and be paid for, and, if so, the rate of pay for overtime work.

(e) A statement of any special responsibility undertaken by the employe, not forbidden by law, which, if not properly performed by the employe, will entitle the employer to make deductions from the wages of the employe, and the terms upon which such deductions may be made. (Act Apr. 15, 1933, c. 250, §1.)

4126-12. Burden of proof on employer if no statement given.—Where no such written agreement is entered into, the burden of proof shall be upon the employer to establish the terms of the verbal agreement in case of a dispute with the employe as to its terms. (Act Apr. 15, 1933, c. 250, §2.)

4126-13. Application of act.—This Act shall not apply to farm labor. Nor shall it apply to casual employees, temporarily employed nor employers employing less than 10 employees. (Act Apr. 15, 1933, c. 250, §3.)

WAGES

Evidence held to sustain finding that failure to return to work for railroad was not a resignation nor abandonment of employment, nor a surrender of seniority rights. George v. C., 183M610, 235NW673. See Dun. Dig. 5808, 5827.

Discharge of railroad fireman for failure to respond to call for emergency run held unjustified. George v. C., 183M610, 235NW673. See Dun. Dig. 5822, 5832.

Railroad fireman's acceptance of reinstatement held not waiver of right to back pay, of which he was wrongfully deprived. George v. C., 183M610, 235NW673. See Dun. Dig. 5832.

4127. Penalty for failure to pay wages promptly.—Whenever any person, firm, company, association or corporation employing labor within this state discharges a servant or employe from his employment, the wages and/or commissions actually earned and unpaid at the time of such discharge shall become immediately due and payable upon demand of such employe, at the usual place of payment, and if not paid within twenty-four hours after such demand, whether such employment was by the day, hour, week, month or piece or by commissions, such discharged employe may charge and collect the amount of his average daily earnings at the rate agreed upon in the contract of employment, for such period, not exceeding fifteen days (after the expiration of said twenty-four hours) as the employer is in default, until full payment or other settlement, satisfactory to said discharged employe, is made. ('19, c. 175, §1; Apr. 8, 1933, c. 173, §1.)

Wages of persons employed in transitory work must be paid at least every 15 days and within 24 hours upon termination of employment, etc. Laws 1933, c. 223.

4128. Notice to be given—settlement of disputes.—Whenever any such employe (not having a contract for a definite period of service), quits or resigns his employment, the wages and/or commissions earned and unpaid at the time of such quitting or resignation shall become due and payable within five days thereafter, at the usual place of payment, and any such employer failing or refusing to pay such wages and/or commissions, after they so become due, upon the demand of such employe at such place of payment, shall be liable to such employe from the date of such demand for an additional sum equal to the amount of his average daily earnings provided in said contract of employment, for every day (not however, exceeding fifteen days in all), until such payment or other settlement satisfactory to said employe, is made; provided, that if any employe having such a contract as is above defined, gives not less than five days' written notice to his employer of his intention to quit such employment, the wages and/or commissions of the employe giving such notice shall become due at the usual place of payment twenty-four hours after he so quits or resigns, and payment thereof may be demanded accordingly, and the penalty herein provided shall apply in such case from the date of such demand; provided further, that if the employer disputes the amount of wages and/or commissions claimed by such employe under the provisions of this, or the preceding section, and the employer in such case makes a legal tender of the amount which he in good faith claims to be due, he shall not be liable for any sum greater than the amount so tendered and interest thereon at the legal rate, unless, in an action brought in a court having juridiction, such employe recovers a greater sum than the amount so tendered with such interest thereon; and if, in such suit, said employe fails to recover a greater sum than that so tendered, with interest as aforesaid, he shall pay the cost of such suit; otherwise the cost thereof shall be paid by said employer; provided further, that in cases where such discharge or quitting employe was, during his employment intrusted with the collection, disbursement or handling of money or property, the employer shall have ten secular days after the termination of the employment, to audit and adjust the accounts of such employe before his or her wages and/or commissions shall become due and payable, and the penalty herein provided shall apply in such case only from the date of demand made after the expiration of such period allowed for such audit and adjustment; and if, upon such audit and adjustment of said accounts of such employe, it is found that any money or property intrusted to him by his employer has not been properly accounted for or paid over to the employer, as provided by the terms of the contract of employment, such employe shall not be entitled to the benefit of this act, but the claim for earned and unpaid wages and/or commissions of such employe, if any, shall be disposed of as provided by existing law. ('19, c. 175, §2; Apr. 8, 1933, c. 173, §2.)

Ten-day time limit was only applicable provided employer had not done some act which relieved employee from making demand. Harris v. N., 193M480, 259NW16. See Dun. Dig. 5815.

4134. Payment of salary or wages earned by non-negotiable instruments unlawful, etc.

Payment of wages to employe with script, requiring placing of stamps thereon, held violation of this section. Op. Atty. Gen., Mar. 20, 1933.

4134-1. Certain acts relating to payment of wages a misdemeanor.—Any person, firm, corporation or association who or which directly or indirectly and with intend to defraud causes any employe to give a receipt for wages for a greater amount than that actually paid to the employe for services rendered, or directly or indirectly demands or receives from any employe any rebate or refund from the wages to which the employe is entitled under his contract of employment with such employer, or in any manner makes or attempts to make it appear that the wages paid to any employe were greater than the amount acually paid to the employe, shall be guilty of a misdemeanor. (Act Apr. 15, 1933, c. 249.)

4135. When assignment, sale or transfer of wage or salary is not to be effective.

Under police power legislature may reasonably regulate assignment of unearned wages or salary. Murphy v. C., 187M65, 244NW335. See Dun. Dig. 566.

§§4135 to 4137, apply to both wages and salaries. Murphy v. C., 187M65, 244NW335. See Dun. Dig. 566.

§§4135 to 4137 apply to salary of an elective county commissioner. Murphy v. C., 187M65, 244NW335. See Dun. Dig. 566.

Compensation of school bus drivers under contracts constitute wages or salaries, if bus belongs to school. Op. Atty. Gen., May 9, 1933.

Right of partial assignee to sue. 18MinnLawRev216.

The wage assignment problem. 19MinnLawRev536.

4137. Assignment void, when.

An assignment of salary by school teacher to be earned and to become due more than 60 days from after date of assignment is void. Op. Atty. Gen., June 14, 1933.

In absence of consent by school board in writing, an assignment of school teacher's salary to be earned or to become due is void. Id.

4140-1. Wages to be paid every fifteen days in certain cases.—Every person, firm, corporation or association employing any person or persons to labor or perform service on any project of a transitory nature, such as the construction, paving, repair or maintenance of roads or highways, sewers or ditches, clearing land or the production of forest products, or any other work which requires the employe to change his place of abode, shall pay the wages or earnings of such person or persons at intervals of not more than fifteen days, and payment thereof shall be made at the place of employment or in close proximity thereto. (Act Apr. 13, 1933, c. 223, §1.)

4140-2. Discharged employee must be paid within 24 hours.—When any such transitory employment as is described in section one hereof, which requires an employe to change his place of abode while performing the service required by the employment, is terminated, either by the completion of the work or by

the discharge or quitting of the employe, the wages or earnings of such employe in such employment shall be paid within 24 hours, and if not then paid the employer shall pay to the employe his reasonable expenses of remaining in the camp or elsewhere away from his home while awaiting the arrival of payment of his wages or earnings, and if such wages or earnings are not paid within three days after the termination of such employment for any cause the employer shall in addition, pay to the employe the average amount of his daily earnings in such employment from the time of the termination of the employment until payment has been made in full, but not for a longer period of time than fifteen days. (Act Apr. 13, 1933, c. 223, §2.)

4140–3. Railroad pay checks to show amount of deduction.—Every railroad corporation doing business within this state shall state clearly on each pay check, or a statement accompanying such check, issued to an employee for services rendered to such corporation in this state the amount of any deduction made from the regular wage of such employee and the reason for such deduction. If there are several deductions on one pay check, each shall be set down separately. (Act Apr. 11, 1935, c. 141, §1.)

DANGEROUS MACHINERY, STRUCTURES, AND PLACES

4141. Dangerous machinery, how guarded—defective machines, etc.

The evidence supports the finding of the jury that negligence of both defendants caused the death of plaintiff's intestate, killed by contact with a wire carrying deadly electrical current—the power company in stringing the wire too close to where employees in the packing corporation worked, and the latter in employing a boy under 16 in an occupation dangerous to life and limb. Weber v. B., 182M486, 234NW682. See Dun. Dig. 2996, 5859.

An employer does not owe the duty of inspecting simple tools and appliances. Hedicke v. H., 185M79, 239 NW896. See Dun. Dig. 5888.

The ordinary crate used in the delivery of a two-gallon spring water bottle is a simple appliance, and the mere fact that a sliver therefrom entered the employe's finger, causing infection, does not prove actionable negligence of the employer. Hedicke v. H., 185M79, 239NW 896. See Dun. Dig. 5888.

Industrial commission cannot enter upon land owned by federal government where post office is being constructed and enforce safety measures provided by §§4141 to 4187, 4279. Op. Atty. Gen., July 28, 1933.

Simple tool doctrine discussed. 18MinnLawRev435.

4145. Manufacture and sale of unguarded machines prohibited.

Evidence held to sustain finding that failure to guard an electric coal conveyor was proximate cause of injury to plaintiff. Nelson v. Z., 190M313, 251NW534. See Dun. Dig. 5895.

Evidence held not to require finding that plaintiff was guilty of contributory negligence in allowing his hand to be caught in unguarded machinery. Id. See Dun. Dig. 5913.

Modern tendency is away from holding as matter of law that an employee is contributorily negligent when an employer's disobedience of a statutory command is proximate cause of injury. Id. See Dun. Dig. 5913.

4147. Certain places, etc., to be lighted.

"Stairway" means flight of stairs, a series of steps ascending or descending to a different level, while a hatchway signifies an opening in a floor, sidewalk or deck. 171M408, 214NW269.

4152. Protection of hoistways, elevators, etc.

The word "Hatchway" has reference to openings in a floor, sidewalk, or deck, and not to the head of a stairway. 171M408, 214NW269.

Section does not protect an invitee who was not an employe. 171M440, 214NW659.

Passenger elevator owners as common carriers. 16 MinnLawRev585.

4153. Scaffolds, hoists, etc.—Etc.

An ordinary stepladder is a simple appliance and comes within the simple tool doctrine, relieving the employer, who furnishes it to be used by his employe, from the duty of inspection. Mozey v. E., 182M419, 234NW687. See Dun. Dig. 5888.

There was no need to base decision allowing recovery for injuries suffered from fall of scaffold upon this section where its applicability was not urged in court below. Gilbert v. M., 192M495, 257NW73. See Dun. Dig. 5888.

4159. Notices, etc., how served—Liability of owners, etc.

Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not report filed under 4197. Op. Atty. Gen. (851j), July 23, 1935.

4161. "Prime mover" defined, etc.

Nelson v. Z., 190M313, 251NW534; note under §4145.

4171. Definition.

Wickstrom v. T., 191M327, 254NW1; note under §4174.

4172. Duty of employer.

Employe suing at common law held to have assumed the risk of working in ice-cold water in defendant's mine. Jurovich v. I., 181M555, 233NW465. See Dun. Dig. 5978.

4174. Ventilation.

Risk of injury from violation of this section is not assumed. 180M21, 230NW125.

In action by employee charging disease contracted because of fumes and gases from dynamite used in blasting a tunnel, wherein defendant denied all negligence and denied practicability of installing adequate ventilating facilities, court erred in striking out as frivolous defense of assumption of risk. Wickstrom v. T., 191M 327, 254NW1. See Dun. Dig. 5973, 5978, 7668a.

Grain elevators come within provision of section. Clark v. B., —M—, 261NW596. See Dun. Dig. 5899.

Recovery by employee predicated solely upon violation of ventilating statutes, defense of assumption of risk is not available. Id. See Dun. Dig. 5969.

4177. Toilet facilities.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW136.

4181. To be kept in perfect condition.

Violation of this section, held, under the evidence, a question for the jury. 179M325, 229NW136.

4194. Scope of report.

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

4197. Admissibility of report.

Prohibition against admitting reports into evidence applies only to those reports submitted to Industrial Commission, not reports submitted to insurance companies or others. Hector Const. Co. v. B., 194M310, 260NW 496. See Dun. Dig. 3348.

Reports of accident may not be disclosed to injured employe or his attorney. Op. Atty. Gen., June 15, 1932.

Any person having an interest present or prospective is entitled to inspect and make copies of orders, suggestions or notices served under 4159, but not report filed under 4197. Op. Atty. Gen. (851j), July 23, 1935.

4202–1. Executive council may appropriate money for safety inspection work.—The State Executive Council is hereby authorized and empowered to expend out of any relief funds available therefor, such sums of money which, in their judgment, may be necessary for safety inspection work required by law for the protection of employes engaged upon such state and federal projects as may be designated by the Council. (Act Apr. 22, 1935, c. 233, §1.)

Sec. 2 of Act Apr. 22, 1935, cited, provides that the act shall take effect from passage.

Money appropriated by Laws 1935, c. 51, is available for use by executive council under Laws 1935, c. 233. Op. Atty. Gen. (928c-15), June 3, 1935.

MINIMUM WAGES

4214. To investigate wages of women and minors.

Employment of minors in wholesale and retail nursery consisting of seeding and cultivating bulbs, flowers and ornamental shrubs is within regulation of minimum wage law. Op. Atty. Gen., Nov. 22, 1933.

4215. Duties of employers—Register.

Industrial commission has power to gather wage data and to examine wage records of adult women. Op. Atty. Gen., June 26, 1933.

4217. Legal minimum wages to be established.

Company must comply with state regulation, though minimum wage exceeds that in federal code. Op. Atty. Gen., Aug. 29, 1933.

4218. Wages, how determined—Etc.

Minimum wage commission had no authority to regulate the hours of workers outside cities of the first and second class. Op. Atty. Gen., May 8, 1931.

4232. Construction of terms.

Farm laborers and household servants are not within provision of act. Op. Atty. Gen., Mar. 12, 1934.

(8).

Employment of women and minors in a wholesale nursery is employment in an "occupation." Op. Atty. Gen., Nov. 22, 1933.

EMPLOYMENT AGENCIES

4254-3. Applicant to file written application.—Every applicant for a license shall file with the commission a written application stating the name and address of the applicant, the kind of license desired, the street and number of the building in which the employment agency is to be maintained, the name of the person who is to have the general management of the office, the name under which the business of the office is to be carried on, whether or not the applicant is pecuniarily interested in any other business of a like nature, and if so, where. Such application shall also state whether the applicant is the only person pecuniarily interested in the business to be carried on under the license and shall be signed by the applicant and sworn to before a notary public. If the applicant is a corporation, the application shall state the names and addresses of the officers and directors of said corporation and shall be signed and sworn to by the president and treasurer thereof. If the applicant is a partnership, the application shall also state the names and addresses of all partners therein, and shall be signed and sworn to by all of them. Said application shall also state whether or not said applicant is at the time of making application, or has at any previous time, been engaged or interested in, or employed by any one engaged in the business of conducting an employment agency, either in this state or any other, and if so, when and where. Said application shall also give as reference the names and addresses of at least three persons of reputed business or professional integrity located in the city or town where such applicant intends to conduct his business. Every applicant for a license to engage in the business of an employment agent shall, at the time of making application for said license, file with the commission a schedule of the fees or charges to be collected by such employment agent for any services rendered together with all rules or regulations that may in any way affect the fees charged or to be charged for any service. Such fees and such rules or regulations may thereafter be changed by filing an amended or supplemental schedule showing such charges, with the commission. It shall be unlawful for any employment agent to charge, demand, collect or receive a greater compensation for any service performed by him than is specified in such schedule filed with the commission.

It shall be the duty of the industrial commission, and it shall have power, jurisdiction and authority to issue licenses to employment agents, and to refuse to issue such license whenever, after due investigation, the commission or a majority of the members thereof finds that the character of the applicant makes him unfit to be an employment agent, or when the premises for conducting the business of an employment agent is found upon investigation to be unfit for such use, or whenever, upon investigation by the commission, it is found and determined, that the number of licensed employment agents or that the employment agency operated by the United States, the state or by the municipality or by two or more thereof jointly in the community in which the applicant for a permit proposes to operate is sufficient to supply the needs of employers and employees. Any such license granted by the commission may also be revoked by it upon due notice to the holder of said license, and upon due cause shown. Failure to comply with the duties, terms, conditions or provisions of Sections 1 to 18 [Mason's Minn. Stat., 1927, §§4254-1 to 4254-18], inclusive, of this act, or with any lawful orders of the commission, shall be deemed due cause to revoke such license. Provided, however, that no employment agency duly licensed to do business at the time of the passage of this act shall be denied a renewal of his, her or its license or have his, her, or its license revoked on the ground that public necessity does not require such an agency. ('25, c. 347, §3; Apr. 23, 1929, c. 293.)

The industrial commission must issue a license unless reasons for rejecting it, pointed out by the statute, are found to exist. The commission has no power to limit the number of agencies. 173M47, 216NW323.

Attempt to confer power upon industrial commission to deny an applicant right to operate an employment agency upon ground that field is already sufficiently occupied, is a denial of due process and equal protection. Engberg v. D., 194M394, 260NW626. See Dun. Dig. 1610 (4).

INJUNCTIONS AND RESTRAINING ORDERS

4255. Labor organizations declared not unlawful.

See §§4260-1 to 4260-15, post.

Laws 1933, c. 416, should be construed as supplemental to §§4255 to 4260 and not as repealing any part of those sections. Op. Atty. Gen., May 31, 1933.

Validity of state anti-injunction legislation. 33MichLaw Rev777.

4256. When restraining order or injunction not to be issued.—No restraining order or injunction shall be granted by any court of this state, or any judge or judges thereof in any case between an employer and employes or between employer and employes or between employes or between persons employed and persons seeking employment, involving or growing out of a dispute concerning terms or conditions of employment, except after notice and a hearing in court and shown to be necessary to prevent irreparable injury to property, or to a property right of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney; provided, that a temporary restraining order may be issued without notice and hearing upon a proper showing that violence is actually being caused or is imminently probable on the part of the person or persons sought to be restrained; and provided that in such restraining order all parties to the action shall be similarly restrained. ('17, c. 493, §2; Apr. 19, 1929, c. 260.)

See §§4260-1 to 4260-15, post.

In suit for injunction to restrain defendants from violating plaintiffs' seniority rights as employees of railway, finding is sustained that no such rights were violated by operating Hill Avenue Yard and connected ore dock of defendant railway company under pool agreement with another railway company as modified by Exhibit A, procured through mediation of defendant Brotherhood. George T. Ross Lodge v. B., 191M373, 254 NW590.

There was no error in receiving opinion of experienced officers of brotherhoods as to whether any seniority rights were violated in operating yard and dock, under pool arrangement. Id. See Dun. Dig. 3332.

Separate agreement as to four individual employees of railway, not parties to suit, can have no bearing on controversy wherein certain employees sought by injunction to restrain violation of seniority rights. Id. See Dun. Dig. 3254.

Determination of railroad brotherhoods that no seniority rights of employees were violated by the said modified pooling agreement should be recognized by the courts. Id.

4257 to 4260.

See §§4260-1 to 4260-15, post.

4260-1. Jurisdiction of court limited.—That no court of the State of Minnesota as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act. (Act Apr. 22, 1933, c. 416, §1.)

This act should be construed as being supplemental to Mason's Stats., §§4255 to 4260. Op. Atty. Gen., May 31, 1933.

4260-2. Public policy declared.—In the interpretation of this Act and in determining the jurisdiction and authority of the courts of the State of Minnesota, as such jurisdiction and authority are herein defined and limited, the public policy of this state is hereby declared as follows:

Whereas under prevailing economic conditions, developed with the aid of governmental authority for owners of property to organize in the corporate and

other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing, to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection; therefore, the following definitions of, and limitations upon, the jurisdiction and authority of the courts of the State of Minnesota are hereby enacted. (Act Apr. 22, 1933, c. 416, §2.)

4260-3. Certain acts not enforceable.—Any undertaking or promise, such as is described in this section, or any other undertaking or promise in conflict with the public policy declared in section 2 of this Act, is hereby declared to be contrary to the public policy of the State of Minnesota, shall not be enforceable in any court of this state and shall not afford any basis for the granting of legal or equitable relief by any court, including specifically the following:

Every undertaking or promise hereafter made, whether written or oral, express or implied, constituting or contained in any contract or agreement of hiring or employment between any individual firm, company, association, or corporation, and any employee or prospective employee of the same, whereby

(a) Either party to such contract or agreement undertakes or promises not to join, become, or remain a member of any labor organization or of any employer organization; or

(b) Either party to such contract or agreement undertakes or promises that he will withdraw from an employment relation in the event that he joins, becomes, or remains a member of any labor organization or of any employer organization. (Act Apr. 22, 1933, c. 416, §3.)

4260-4. Court may not issue restraining orders in certain cases.—No court of the State of Minnesota shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any organization or of any employer organization, regardless of any such undertaking or promise as is described in section 3 of this Act:

(c) Paying or giving to, or withholding from any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of this state.

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence:

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 3 of this Act. (Act Apr. 22, 1933, c. 416, §4.)

A claim for damages for past breach of contract is not a "labor dispute," and an injunction to prohibit picketing to force a settlement is not forbidden. Jensen v. S., 194M58, 259NW811. See Dun. Dig. 9674.

4260-5. Same.—No court of the State of Minnesota shall have jurisdiction to issue a restraining order or temporary or permanent injunction upon the ground that any of the persons participating or interested in a labor dispute constitute or are engaged in an unlawful combination or conspiracy because of the doing in concert of the Acts enumerated in section 4 of this Act. (Act Apr. 22, 1933, c. 416, §5.)

4260-6. Associations not to be responsible for acts of individuals.—No officer or member of any association or organization, and no association or organization participating or interested in a labor dispute, shall be held responsible or liable in any court of the State of Minnesota for the unlawful acts of individual officers, members, or agents, except upon clear proof of actual participation in, or actual authorization of, such acts, or of ratification of such acts after actual knowledge thereof. (Act Apr. 22, 1933, c. 416, §6.)

4260-7. Jurisdiction of court in certain cases.—No court of the State of Minnesota shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act for actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complaint by the denial of relief than will be inflicted upon defendants by the granting of relief:

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property have failed to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property. Provided, however, that if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order may be issued upon testimony under oath, sufficient, if sustained, to justify the court in issuing a temporary injunction upon a hearing after notice. Such a temporary restraining order shall be effective until hearing and decision on the petition for a temporary injunction unless theretofore revoked by the court, which hearing shall be held within ten days after issuance of a temporary restraining order unless defendants ask for additional time, provided that any temporary restraining order so issued shall become void at the expiration of said period of 10 days, unless renewed. No temporary restraining order or tempo-

rary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a seasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking herein mentioned shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing herein contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. (Act Apr. 22, 1933, c. 416, §7.)

4260-8. Same.—No restraining order or temporary or permanent injunction shall be granted in a case involving or growing out of a labor dispute, except on the basis of findings of fact made and filed by the court in the record of the case prior to the issuance of such restraining order or injunction; and every restraining order or injunction granted in a case involving or growing out of a labor dispute shall include only a prohibition of such specific act or acts as may be expressly complained of in the bill of complaint or petition filed in such case and as shall be expressly included in said findings of fact made and filed by the court as provided herein. (Act Apr. 22, 1933, c. 416, §8.)

4260-9. Court to certify proceedings to Supreme Court.—Whenever any court of the State of Minnesota shall issue or deny any temporary injunction in a case involving or growing out of a labor dispute, the court shall, upon the request of any party to the proceedings and on his filing the usual bond for costs, forthwith certify as in ordinary cases the record of the case to the Supreme Court for its review. Upon the filing of such record in the Supreme Court, the appeal shall be heard and the temporary injunctive order affirmed, modified, or set aside with the greatest possible expedition, giving the proceedings precedence over all other matters except older matters of the same character. (Act Apr. 22, 1933, c. 416, §9.)

4260-10. Right to speedy trial.—In all cases arising under this Act in which a person shall be charged with contempt in a court of the State of Minnesota (as herein defined), the accused shall enjoy the right to a speedy and public trial by an impartial jury of the county and district wherein the contempt shall have been committed. Provided, that this right shall not apply to contempts committed in the presence of the court or so near thereto as to interfere directly with the administration of justice or to apply to the misbehavior, misconduct, or disobedience of any officer of the court in respect to the writs, orders, or process of the court. (Act Apr. 22, 1933, c. 416, §10.)

4260-11. Proceedings in contempt cases.—The defendant in any proceeding for contempt of court may file with the court a demand for the retirement of the judge sitting in the proceeding, if the contempt arises from an attack upon the character or conduct of such judge and if the attack occurred elsewhere than in the presence of the court or so near thereto as to interfere directly with the administration of justice. Upon the filing of any such demand the judge shall thereupon proceed no further, but another judge shall be designated in the same manner as is provided by law. The demand shall be filed prior to the hearing in the contempt proceeding. (Act Apr. 22, 1933, c. 416, §11.)

4260-12. Definitions.—When used in this Act and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft or occupation; or have direct or indirect interests therin; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the State of Minnesota" means any court of the State of Minnesota whose jurisdiction has been or may be conferred or defined or limited by Act of Legislature. (Act Apr. 22, 1933, c. 416, §12.)

(c).
A claim for damages for past breach of contract is not a "labor dispute," and an injunction to prohibit picketing to force a settlement is not forbidden. Jensen v. S., 194M58, 259NW811. See Dun. Dig. 9674.

4260-13. Provisions separable.—If any provision of this Act or the application thereof to any person or circumstance is held unconstitutional or otherwise invalid, the remaining provisions of the Act and the application of such provisions to other persons or circumstances shall not be affected thereby. (Act Apr. 22, 1933, c. 416, §13.)

4260-14 Inconsistent acts repealed.—All Acts and parts of Acts in conflict with the provisions of this Act are hereby repealed. (Act Apr. 22, 1933, c. 416, §14.)

4260-15. Application.—This Act shall not be held to apply to policemen or firemen or any other public officials charged with duties relating to public safety. (Act Apr. 22, 1933, c. 416, §15.)

4260-21. Injunctions between employers in labor disputes.—Whenever any group of employers of labor, residing or operating in this state, have, by written agreement between themselves, agreed upon certain minimum wages to be paid to their employees, hours of labor, and/or other conditions of employment, and such agreement is wilfully violated, then, in that event, any one or more of such employers, parties to the agreement, may, by an appropriate action in a district court, make application for a restraining order, and/or temporary injunction, and/or permanent injunction, against the party or parties so violating said agreement, to restrain the violation thereof as to the minimum wages, hours of labor and the other conditions of employment specified in said agreement, and proof of wilful violation of said agreement in respect to any or either thereof, shall be suffi-

cient grounds for the issuance of such restraining order and/or temporary injunction and/or permanent injunction. (Act Apr. 24, 1935, c. 292, §1.)

4260–22. Limitation of act.—This act shall not apply to actions to enjoin the violation of open or closed shop agreements nor to actions to enjoin the violation of agreements or so-called codes of fair competition made or established pursuant to any state or Federal law. (Act Apr. 24, 1935, c. 292, §2.)

4260–23. Application of act.—The provisions of Laws 1933, Chapter 416 [§§4260-1 to 4260-15], shall not apply to actions or proceedings to which this act applies. (Act Apr. 24, 1935, c. 292, §3.)

CHAPTER 23A

Workmen's Compensation Act

PART 1

COMPENSATION BY ACTION AT LAW—MODIFICATION OF REMEDIES

4261. Injury or death of employee.

In general.

See also notes under §4326.

174M359, 219NW292; 174M362, 219NW293; 174M491, 219 NW869.

Liberal construction of law. 174M227, 218NW882; 177 M503, 225NW428.

Evidence sustains finding that employee sustained an accidental injury from which a sarcoma resulting in his death developed, and that the injury was the cause of his death. Hertz v. W., 184M1, 237NW610. See Dun. Dig. 10396.

Death of employee in automobile of another employee at railroad crossing while on way to work, held not compensable. Kelley v. N., 190M291, 251NW274. See Dun. Dig. 10403, 10405.

Evidence supports finding that burns on face and hands caused combined degeneration of the spinal cord. Sorenson v. L., 190M406, 251NW901. See Dun. Dig. 10410.

Compensation act should receive a broad and liberal construction in interest of workman to carry out its policy. Nyberg v. L., 192M404, 256NW732. See Dun. Dig. 10385.

Death of city fireman, accidentally killed while working under orders of his chief, in attempted rescue of men asphyxiated in a well just outside city limits, held to have been due to accident arising out of and in course of his employment. Grym v. C., 193M62, 257NW661. See Dun. Dig. 10404.

Act is to be liberally construed. Keegan v. K., 194M 261, 260NW318. See Dun. Dig. 10385.

Workmen's Compensation Act would be constitutional if amended so as to deprive employer and employee of right of election. Op. Atty. Gen. (523a-13), Dec. 18, 1934.

Accident.

See notes under §4326.

Arising out of and in the course of employment.

See notes under §4326.

4262. Certain defenses excluded.

A servant who unnecessarily exposes himself to the hazards of flying particles of rock which result from the unloading of large rocks upon other rocks by a derrick equipped with a grappling contrivance, assumes the risk of injury as a matter of law. Wickman v. P., 184M431, 238NW888. See Dun. Dig. 5974.

4263. Defenses—When excluded.

Where employee is injured from defect in a simple tool, an employer not under the Workmen's Compensation Act has no need of the defenses of which he is deprived by that act. Hedicke v. H., 185M79, 239NW896. See Dun. Dig. 5888.

4267. Legal services and disbursements, etc.

Wegersley v. M., 184M393, 238NW792.

Attorney fees cannot be collected out of award unless approved by commission. 180M388, 231NW193.

PART 2

ELECTIVE COMPENSATION

4268. Not applicable to certain employments.—This Act shall not be construed or held to apply to any common carrier by steam railroad, domestic servants, farm laborers or persons whose employment at the time of the injury is casual, and not in the usual course of the trade, business, profession or occupation of his employer; provided, that part 2 of the Compensation Act shall apply to farm labor if the employer shall have elected to accept the provisions of such part 2 by posting a written or printed statement of his election and filing a duplicate thereof with the Industrial Commission as provided by Section 4271 before the accident occurs to an employe, for which damages or compensation may be claimed, unless the employe shall signify his election, as provided by Section 4271 not to accept or be bound by the provisions of the Compensation Act, in which case said part 2 shall not apply; and, provided further, that either party may terminate his acceptance or election not to accept the provisions of part 2 of the Compensation Act as provided by Section 4272; provided, however, that the purchase and acceptance by any employer of a valid compensation insurance policy, which shall include in its coverage a classification of farm laborers, shall constitute, as to such farm laborers an election by such employer to be bound by Part 2 of the compensation Act without any further act on his part, and such election shall take effect and continue from the effective date of such policy and as long only as such policy shall remain in force. ('21, c. 82, §8; '23, c. 300, §1; Apr. 1. 1933, c. 134.)

Cited without application. 172M178, 215NW204.

1. In general.

Persons subject to and within the terms of the Wisconsin Workmen's Compensation Act are confined to it for their remedy. 176M592, 224NW247.

Finding that bank officer on a "good will tour" was not acting within the scope of his employment, sustained. Quast v. S., 184M329, 238NW677. See Dun. Dig. 10394.

Finding that one cleaning and painting smokestack for specified amount was employe, sustained. Fuller v. N., 248NW756. See Dun. Dig. 10395(65).

Injuries of an employee cannot be classified under both §4268 and §4327. Clark v. B., —M—, 261NW596. See Dun. Dig. 10398.

2. Farm laborers.

One employed to milk, and take care of barns on dairy farm, conducted principally for supplying the dairy products and vegetables consumed by the students at a college owned and conducted by the employer, is a farm laborer. 176M100, 222NW525.

Employe in industrial business was not a farm laborer, though sometimes required to do farm work for his employer. 177M503, 225NW428.

Employee of commercial thresherman and cornshredderman, held not a "farm laborer," though operating silo filler at time of injury. 178M512, 227NW661.

Neither task on which workman is engaged at moment of injury, nor place where it is being performed is test of whether he is "farm laborer," and carpenter repairing buildings on farm owned by bank was not a "farm laborer." 180M40, 230NW124.

In determining whether a workman is a farm laborer, nature of employment is test rather than particular item of work he is doing when injured. Hebranson v. F., 187M260, 245NW138.

Finding that one working on farm owned by creamery corporation was "farm laborer," sustained. Hebranson v. F., 187M260, 245NW138. See Dun. Dig. 10394.

Farmer electing to come under compensation act, held within such act at time of injury to one caring for sheep. Wilson v. T., 188M97, 246NW542. See Dun. Dig. 10389.

3. Casual employment—See note under §4326.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs on the houses. Billmayer v. S., 177M465, 225NW426.

One doing odd jobs about a house with respect to storm windows and small repairs, was a "casual." Billmayer v. S., 177M465, 225NW426.

Child of one in charge of store was not an employe while volunteering brief and uncompensated service in the store. 175M579, 222NW275.

One owning home and four resident properties was not carrying on a business or occupation with respect to one doing odd jobs. Billmayer v. S., 177M465, 225NW 426.

Though interior decorating for an insurance company was casual work, still it was "in the usual course of the trade, business, profession, or occupation of the employer." Cardinal v. P., 186M534, 243NW706. See Dun. Dig. 10404.

To be excluded from compensation on ground that employment was casual, employment must be both